2366

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 825. 2366 ~~2366~~ 10.

A. W. CORBUS, APPELLANT,

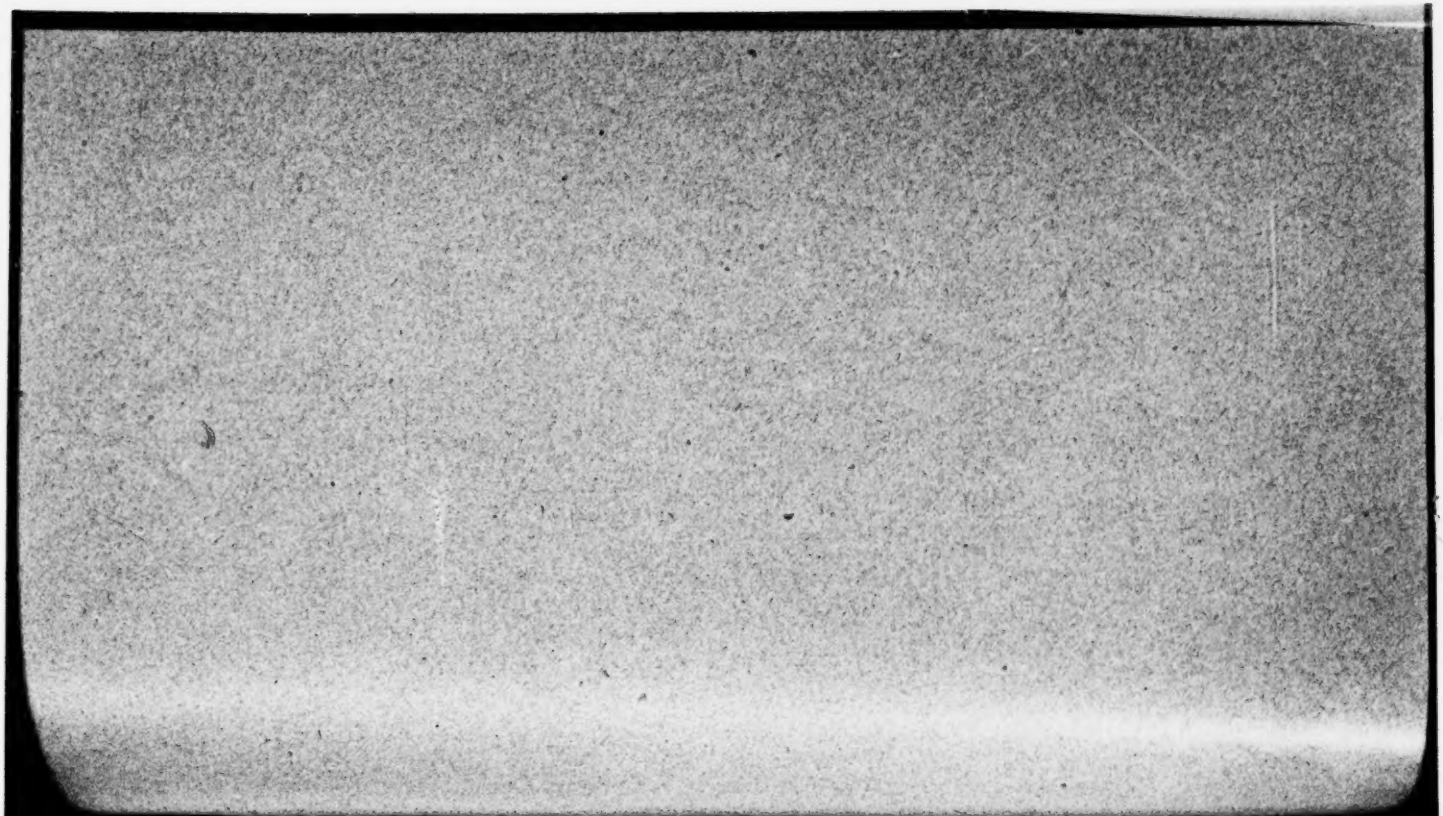
vs.

THE ALASKA TREADWELL GOLD MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED MAY 5, 1900.

(17,739.)



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OCTOBER TERM, 1899.

No. 625.

A. W. CORBUS, APPELLANT,

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 9, 1900.

UNITED STATES OF AMERICA, }
District of Alaska. }

eas and proceedings begun and held in a cause in equity at a regular term of the district court of the United States in and for he district of Alaska, at Juneau, Alaska, on the 7th day of November, 1899.

Present: Honorable C. S. Johnson, judge.

the United States District Court in and for the District of Alaska.

A. W. CORBUS }
vs. } In Equity.
E ALASKA-TREADWELL GOLD MINING COMPANY. }

the honorable judge of the United States district court in and or the district of Alaska:

A. W. Corbus, of the district of Alaska and a citizen of the United tes of America, presents this his bill against the Alaska-Tread- l Gold Mining Company, a corporation duly incorporated under i by virtue of the laws of the State of Minnesota, and doing iness in the district of Alaska, on Douglas island, Alaska; and reupon your orator avers and says:

1.

That the said Alaska-Treadwell Gold Mining Company is a min- corporation incorporated under and pursuant to the laws of the te of Minnesota, and is engaged in mining and milling ore in district of Alaska, on Douglas island, Alaska, and has an office l agent in the district of Alaska, on the said Douglas island, to , one J. P. Corbus, who has the general supervision, control, and nagement of the affairs of said company in the said district of ska.

2.

That in the prosecution of said business of mining and reducing ore and extracting therefrom the gold therein contained the said company owns and operates five hundred forty stamps for the crushing and reduction of its said ore. l company also, under and pursuant to its said charter, owns a rcantile establishment and is engaged in the mercantile business large extent, to wit, about the sum of fifty thousand dollars in ume per annum, which said mercantile establishment is situated Douglas island, Alaska, and said business is being run and en- ed in in said district of Alaska.

3.

Your orator further says that the capital stock of said company he sum of five million dollars, divided into two hundred thou-

sand shares of the par value of twenty-five dollars per share, and your orator is the owner of one hundred shares of said capital stock, and was such owner on the date of the passage of the pretended tax law hereinafter mentioned; that the balance of said capital stock is owned and divided among a large number of persons and corporations, nearly all of whom are non-residents of the district of Alaska and are too numerous to all be made parties hereto, and this suit is brought by your orator in his own behalf and in behalf of all other stockholders of said company similarily situated to himself.

4.

The general control of the affairs of said company is entrusted to a board of directors who reside in San Francisco, State of California, and are non-residents of the district of Alaska; that the complete control and management of the affairs of said company in Alaska is under the supervision and control of its general superintendent and manager, J. P. Corbus.

5.

Your orator further says that the said company, acting by its said general superintendent in Alaska, which action is within the scope of the general authority and power conferred upon him, is

3 purposing and intending and, unless restrained by this honorable court, will apply to this honorable court for a license, and tender and pay to the clerk of this court for such license the sum of three dollars each upon said stamps, and the sum of two hundred and fifty dollars for a license to engage in said mercantile business for the year beginning July 1st, 1899, and ending June 30th, 1900, together with a clerk's fee of five dollars for issuing said license, making in all the sum of eighteen hundred and seventy-five dollars, which said payment and expenditure of the moneys of said company said company is purposing and intending to make under and pursuant to the provisions of chapter 44 of the act of March 3rd, 1899, of the Congress of the United States, entitled "An act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district."

6.

Your orator further shows and charges that the provisions of said act requiring the payment of said tax of three dollars per stamp per year by said company, and the sum of two hundred and fifty dollars per annum for said mercantile establishment, *is* contrary to the Constitution of the United States and null and void and of no force and effect, for the reason that said tax is not apportioned according to the rights of the *pu*population of the citizens of the United States throughout the United States, and for the further reason that said tax is not uniform throughout the United States, but is a tax for national purposes solely upon the citizens of the United States residing and doing business in the district of Alaska. Your orator further shows that said tax is exorbitant in its provisions, and so

uncertain and indefinite in its terms as to said mercantile establishment that it is impossible, without paying the maximum amount of tax therein laid upon such mercantile establishments, to certainly avoid the pains and penalties by said act attempted to be imposed, and if said act is complied with, it will result in the taking of the property of your orator and the others in whose behalf he brings this suit, for public purposes, and without adequate compensation
4 or any compensation therefor, and without due process of law. And your orator further says that such tax so required as a condition precedent to authorize the engaging in the business aforesaid is void and of no force or effect because forbidden especially by the first clause of section eight of article one of the Constitution of the United States, by the fourth clause of section nine of article one of said Constitution, and by the sixth clause of section nine of article one of said Constitution. Your orator further shows that said pretended act of Congress, so far as it attempts to lay and collect the said tax, is contrary to and forbidden by the fifth amendment to the Constitution of the United States, in that it deprives your orator and other persons similarly situated of their property without due process of law, and taxes private property for public uses without just compensation or without any compensation whatsoever, and is also forbidden by and is contrary to the first section of the 14th amendment to the Constitution of the United States.

7.

Your orator further shows that said business of quartz mining and operating a quartz mill and mercantile establishment are lawful and legitimate business enterprises which citizens of the United States and Alaska are entitled, under said Constitution, to pursue with the same privileges and immunities as citizens of the United States residing elsewhere.

8.

Your orator further shows that this suit is not a collusive one, brought to confer jurisdiction of the case upon this court, of which it would not otherwise have cognizance; that your orator has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but has made such request of the officers or agents of said company controlling its business in Alaska, but they have failed and refused & *refused* not to make such application and pay such tax, for the reason that, though they doubt the constitution-
5 ality of said law, the pains and penalties imposed by said act for the omission so to do are so severe that said company and its said officers and agents fear, and have reason to fear, the great loss and injury in defending prosecution that might be brought against it for the failure to comply with said law; that they deem it better to submit to the illegal tax than to incur the consequences of the failure to comply with it; that your orator is advised that there is no procedure provided by law whereby said company could test the validity of said law and the constitutionality of said tax

without incurring the pains and penalties therein provided for the violation thereof, inasmuch as the said act requires the voluntary payment of the tax imposed under a penalty of heavy forfeiture and fines for the failure to make such voluntary payment; that the said company, in view of the foregoing, has refused and still refuses and intends omitting to comply with complainant's demand to refuse to pay said tax, and has resolved and determined and intends to comply with all and singular the provisions of said chapter 44 of said act of Congress, and to pay said tax upon its stamps and upon its said mercantile establishment, amounting to the said sum of eighteen hundred and seventy-five dollars for the said year, and to continue the payment of a like or greater sum for each year hereafter.

9.

Your orator further shows that if said company and its officers, as they have proposed and declared their intention to do, shall pay said tax the assets of the said company will be thereby diminished and lessened, as well as the dividends to be declared upon the stock thereof, and the value of the shares of said company, including the shares owned by your orator and all others in whose behalf this suit is brought; and your orator further shows that this suit involves more than the sum of five thousand dollars; that unless the company should comply with said act or this court grant the relief herein prayed for the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act,
6 and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened, to the great and irreparable injury and damage to your orator and other shareholders in said company.

10.

Your orator further shows that this is a suit of a civil nature in equity and arises under the Constitution and the laws of the United States and draws in question the validity of an act of Congress and the authority exercised under the United States, and that your orator has no plain, speedy, and adequate remedy at law.

Wherefore your orator prays:

First. That it may please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Alaska-Treadwell Gold Mining Company, commanding it, on a certain day and under a severe penalty under the said writ, to be answered by and appear before your honor in this honorable court, and then and there full, true, and perfect answer to make of all and singular the premises, and further stand, perform, and do such further orders and directions and decree as your honor shall deem meet and shall be agreeable to equity and good conscience.

Second. That said provisions of chapter 44 of the act of Congress of March 3rd, 1899, requiring the said company to apply for a

license and pay the said tax, as a condition precedent to engaging in its said business, be declared contrary to the provisions of the Constitution of the United States and null and void.

Third. That this court issue its most gracious writ of injunction, restraining the said company, its officers, agents, and em-
7 ployees, from applying for said license and paying said tax.

Fourth. That if the court shall deem it proper until the final determination and hearing of this cause that it make such order or orders as it may deem proper whereby the said sum necessary in payment of said tax may be paid by said company into the register of the court to abide the final determination of this action and the adjudication of the validity of said statute.

Fifth. And your orator further prays for such other and further relief as in equity and good conscience it may show itself entitled —.

MALONY & COBB,
Solicitors for Complainant.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

A. W. Corbus, being duly sworn, deposes and says that he is the complainant in the within-entitled action; that he has read the above and foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

A. W. CORBUS.

Subscribed and sworn to before me this 17th day of July, 1899.

[SEAL.]

J. H. COBB,
Notary Public in & for Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Co., defendant. Bill of complaint. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for pl'ff. (Original.)

8 On July 17th, 1899, the complainant filed his precipe for subpœna as follows, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

Albert D. Elliot, Esq., clerk of the district court of the United States for the district of Alaska:

You will please issue a subpœna to the defendant, The Alaska-Treadwell Gold Mining Company, in the above-entitled cause, re-

turnable on or before twenty days of the date of the service of said subpœna.

Juneau, Alaska, July 17, 1899.

MALONY & COBB,
Solicitors for Complainant, Juneau, Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Co., defendant. Precipe for subpœna. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, attorneys for complainant; office, Juneau, Alaska.

9 And on the same day the complainant filed and presented his motion for a restraining order, which is in words and figures as follows, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

Now comes the plaintiff in the above cause and moves the court to issue a restraining order or temporary injunction upon the hearing of this cause, and for grounds therefor shows that the defendant is purposing and intending and, unless this order issues, will make its application for a license, as set up in the complaint herein, and pay the money therefor specified to the clerk of this court, and the injuries set up and complained of in said bill of complaint will have already occurred and plaintiff's rights will be permanently lost if such payment is made.

This motion is based upon the sworn complaint herein filed.

MALONY & COBB,
Solicitors for Plaintiff.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Motion. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

10 And afterwards, on the 17th day of July, 1899, the court made and entered the following order, to wit:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS,
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

On this 17th day of July, 1899, came on to be heard the motion of plaintiff in the above cause for a restraining order restraining the defendant from applying for and voluntarily paying the license

ax of three dollars per stamp upon 540 stamps in its said mills, nd the license tax of two hundred and fifty dollars upon its mer- antile establishment, the same property set up in the bill of com- laint herein filed; and the court having considered said bill of omplaint, together with said motion, and being fully advised in the remises:

It is ordered that defendant be restrained from paying the license ees mentioned in said bill upon such application, but be allowed to ay said money into the registry of the court, pending the hearing nd final determination of the rights of the parties herein, and that pon said payment into the registry of the court in this cause any license applied for by the defendant be issued by the clerk of the court to the defendant, authorizing it to engage in and pursue the business specified in said license, the same to all intents and pur- poses as if said money had been paid upon said application.

It is further ordered that a copy of the complaint, motion, and other proceedings herein be served upon the United States district attorney in and for the district of Alaska, and that he be given leave to appear and defend this cause in behalf of the United States.

Done in open court the day and date above written.

CHARLES S. JOHNSON, *Judge*.

11 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Order. Filed Jul- 17, 1899. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards, on the 17th day of July, 1899, a subpœna was issued, which, with the return thereon, was in words and figures as follows:

In the United States District Court in and for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

The President of the United States of America to the Alaska-Tread- well Gold Mining Company, Greeting:

You are hereby commanded that you be and appear in the said district court of the United States aforesaid, at the court-room, in Sitka, on or before twenty days of the date of the service hereof upon you, then and there to answer a bill of complaint exhibited against you in said court by A. W. Corbus, who is a citizen of the United States residing in Alaska, and to do and receive that the said court shall have considered in that behalf; and this you are not to omit, under a penalty of two hundred and fifty dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said district

court, this the 17th day of July, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

[SEAL.] ALBERT D. ELLIOT, *Clerk.*

You are hereby commanded to enter your appearance in the above suit on or before the twentieth day from the date of the service of the above subpœna upon you, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

ALBERT D. ELLIOT, *Clerk.*

12 I hereby certify that the within writ of subpœna came to hand on the 19th day of July, 1899, and was executed on the 19th day of July, 1899, by serving the same on The Alaska Treadwell Gold Mining Company, the within-named defendant, by delivering to J. P. Corbus in person, the general manager and superintendent of said company, a true copy of said writ, together with the accompanying certified copy of the original bill of complaint in said cause.

I further certify that at the same time I served the said defendant with the restraining order made in said cause, by delivering to the said J. P. Corbus a true copy of said restraining order, certified to as such by the clerk under his hand and the seal of the court.

JAMES M. SHOUP,
Marshal for Alaska.
By JOHN F. McELHENY, *Deputy.*

Fees: Serving subpœna	2.00
" " restraining order	2.00
Mileage	.60
Total	4.60

Paid by plaintiff's attorney.

Endorsed: No. 976. In the United States district court for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska-Treadwell Gold Mining Company, defendant. Subpœna. Returned and filed Jul- 31, 1899. Albert D. Elliot, clerk. Malony & Cobb, attorney- for plaintiff.

And afterwards, on the 15th day of November, 1899, the defendant filed his demurrer, which is in words and figures as follows, to wit:

13 In the United States District Court in and for the District of Alaska.

A. W. CORBUS, Plaintiff,
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY, Defendant. } In Equity.

The Demurrer of the Defendant, The Alaska-Treadwell Gold Mining Company, to the Bill of Complaint of the Plaintiff, A. W. Corbus.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the plaintiff's said bill of complaint to be true in such manner or form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer saith that the said plaintiff hath not in and by the said bill made or stated *a* such case as entitleth him to any relief thereby sought and prayed for from or against this defendant.

Therefore, and for other good causes of demurrer appearing on the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether *he* shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most reasonably sustained.

M. E. McENANY,
Solicitors for Defendant.

UNITED STATES OF AMERICA, *District of Alaska,* } *ss.:*

J. P. Corbus makes solemn oath and says that he is the superintendent and general manager of the above-named defendant, The Alaska Treadwell Gold Mining Company, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

J. P. CORBUS.

Subscribed and sworn to before me this 15th day of November, 1899.

[L. S.] M. GRINNELL,
Notary Public for Alaska at Juneau.

14 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

——,
Counsel for Defendant.

Service of the above and foregoing demurrer is admitted this Nov. 15th, 1899.

MALONY & COBB,
Solicitors for Pl'ff.

Endorsed: No. 976. In the U. S. district court for the district of Alaska. A. W. Corbus *vs.* Alaska Treadwell Gold Mining Co. Demurrer. Filed Nov. 15, 1899. Albert D. Elliot, clerk. M. E. McEnany, att'y for def't.

And afterwards, said case coming on to be heard upon said demurrer, the court rendered the following judgment, to wit:

In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA TREADWELL GOLD MINING COMPANY. } No. —.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL. } No. —.

CHARLES STEWART
vs.
THE WASHINGTON & ALASKA STEAMSHIP CO. } No. —.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co.
The Alaska Packers' Association.
The Pacific Steam Whaling Co.

Decree.

The above-mentioned suits and protests came on regularly to be heard at the adjourned November, 1899, term of this court at Juneau, in said district. By consent of counsel all of said suits and matters were heard and argued together and at one time. All and each of said suits and protests were argued by counsel, and therefore, the court being fully advised, and after due consideration thereupon, it is ordered, adjudged, and decreed by the court that in the cases of A. W. Corbus *vs.* The Alaska Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, and Charles
15 Stewart *vs.* The Washington & Alaska Steamship Co. and each of them the demurrers are sustained, and that the bills in said cases and each of them be, and the same are hereby, dismissed with costs in each case against the plaintiff, to be taxed by the clerk, and in each of said suits in which the defendants have deposited with the clerk of the court a sum equal to the amount required by law for a license to conduct the business in which said defendant is engaged the clerk of this court is hereby directed to issue such license and cover said sum or sums of money into the Treasury of the United States, unless an appeal be taken within 60 days.

In the matter of the protests of the Alaska Steamship Co., the

Pacific Coast Co., the Pacific Coast Steamship Co. (3), the Pacific Steam Whaling Co., the Alaska Packers' Association, where the same can be construed into an application for a license under the law for conducting the several businesses therein described, the clerk is directed to issue such license in each instance, and turn said sums of money into the Treasury of the United States. So far as said protests seek relief against the payment of a license on the several businesses therein described, the same is overruled, denied, and ignored in each case of protest.

This order and decree will be entered by the clerk in each suit and in the matter of each protest.

CHARLES S. JOHNSON,
U. S. District Judge.

Endorsed: No. 976. A. W. Corbus *vs.* Alaska Treadwell G. M. Co. No. 978. John W. Roberts *vs.* C. F. Meyers. No. 1048. Charles Stewart *vs.* The Washington & Alaska S. S. Co. Order and decree. Filed Jan. 2, 1900. Albert D. Elliot, clerk.

The court also filed an opinion in said cause, which is as follows, to wit:

16 In the District Court of the United States for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING CO.

JOHN W. ROBERTS
vs.
C. F. MEYERS ET AL.

CHARLES STEWART
vs.
THE WASHINGTON AND ALASKA STEAMSHIP CO.

And protests by—
The Alaska Steamship Co.
The Pacific Coast Co.
The Pacific Coast Steamship Co. (3).
The Pacific Steam Whaling Co.
The Alaska Packers' Association.

1. Injunction.—An injunction by one stockholder against the corporation to restrain the latter from applying for a license and paying the tax or fee imposed by law for conducting a business upon which the Congress has imposed such tax will not lie.
2. Practice.—Equity will not interfere where the parties have a plain and adequate remedy at law.

3. Same.—To induce a court of equity to take jurisdiction of a suit on the ground that a multiplicity of suits is threatened and irreparable injury thereby about to be sustained the facts must be so plead that the court can reasonably infer that such allegations are true.

4. Protests.—A mere protest against the payment of a license tax on the ground that the law seeking to impose the same is unconstitutional will not give the court jurisdiction to try and determine the constitutionality of the law.

Maloney & Cobb for Corbus.
M. E. McEnany for Alaska-Treadwell G. M. Co.
John R. Winn for Roberts.
F. D. Kelsey for Meyers *et al.*
John G. Heid for Stewart.
Lyons & Lyons for Washington & Alaska Steamship Co.
John R. Winn for the P. C. Co., P. C. S. S. Co., and P. S. W. Co.
Arthur K. Delaney for Alaska Packers' Association.
R. W. Jennings for the Alaska Steamship Co.
R. A. Freidrich, U. S. attorney, *amicus curiæ*.

17 JOHNSON, *District Judge:*

The following cases were at one and the same time argued and submitted to the court for decision and determination: A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Co., John W. Roberts *vs.* C. F. Meyers *et al.*, Charles Stewart *vs.* The Washington and Alaska Steamship Co., and protests against the payment of the license tax by the Alaska Steamship Co., the Pacific Coast Co., the Pacific Coast Steamship Co., the Pacific Steam Whaling Co., and the Alaska Packers' Association.

The object and purpose of each suit and each protest being the same—that is, to determine the constitutionality of the provisions of chapter 44 of the act of Congress of March 3rd, 1899, entitled "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for said district"—they may all be disposed of together.

As to the forms of action, they may be divided into two classes. The first three are suits in equity, wherein a stockholder of the defendant corporation or copartner of the defendant copartnership seeks to enjoin the corporation or copartnership from applying for a license or paying the license fee or tax required by said act to be paid as a condition precedent to conducting their respective lines of business. The remaining cases are simple protests against paying the license tax imposed by law, principally on the ground that the same is unconstitutional, and praying that they may pay the amount of the license tax into the registry of the court, there to be held until the final action of the court on their protests. In each and all of the cases the license fee or tax has been paid to the clerk of the court, there to remain by order of the court until the final determination of these suits and protests.

In the case of Corbus *vs.* The Alaska-Treadwell Gold Mining Co.

the plaintiff seeks to enjoin the defendant corporation from paying the license tax imposed for operating certain quartz stamp mills and conducting a mercantile establishment. In Stewart *vs.* The Washington and Alaska Steamship Co., the injunction is
18 sought for the purpose of restraining the payment of the license for an ocean and coastwise vessel doing local business for hire, plying in Alaskan waters, the property of the defendant corporation. Roberts *vs.* Meyer *et al.* is identical with the last-named case except that the owner of the vessel in question is a company instead of a corporation, one member of which seeks to enjoin the other members. The protests of the Alaska Steamship Co., the Pacific Coast Co., and the Pacific Coast Steamship Co. are against the payment of licenses on steamers and wharves, while the protests of the Pacific Steam Whaling Co. and the Alaska Packers' Association are directed against the license imposed for operating steamboats and canning and salting salmon in Alaska.

To each of the three bills a demurrer to the equity thereof was interposed by defendants. The attorneys for the defendants, however, made no arguments and filed no briefs in support of their respective demurrers. Copies of the bills having been served upon the district attorney, he asked and obtained leave of the court to appear as *amicus curiæ*, and in that capacity and disclaiming any intention to in any manner represent or bind the United States he denied that the court had any jurisdiction under any of the forms of action presented to hear and determine the cases upon their merits. He denied the right or power of the court to enjoin the defendants in any case from paying the license in question, and he also argued in support of the constitutionality of the law and offered a brief in support of both contentions.

It is necessary, then, to first ascertain whether the court has jurisdiction under the pleadings in any of these cases to try and determine the constitutionality of the law in question.

In the three equity suits the plaintiffs rely largely, if not wholly, upon the case of Pollock *vs.* Farmers' Loan and Trust Co., 157 U. S., 229, and 158 *id.*, 601. It is contended that the suits at bar are identical with the Pollock case, and that the Supreme Court having in that case decided that a stockholder might enjoin
19 a corporation from paying a tax alleged to be unconstitutional, that this court is bound thereby in these cases. If it be conceded that the cases are identical and that the decision in the Pollock case is entitled to the breadth of construction contended for by plaintiff's counsel, then it will not be denied that this court is bound thereby; but are the cases identical? We think not. An examination of the bills before us discloses the existence of corporations and a copartnership formed for the simple purpose, in the one instance of mining and milling ores for the precious metals therein contained, and in the other two cases for operating steamers in Alaskan waters as common carriers. It is not claimed that any trusts have been committed to the respective defendants, their only obligation and duty being to their stockholders; and the threatened multiplicity of suits is charged as "suits and prosecutions for the

violation of said act," and the irreparable injury threatened and complained of would be incurred by "defeinding said suits and avoiding the fines and forfeitures provided by said act." In Pollock *vs.* Farmers' Loan and Trust Co. the bill alleged "that under and by virtue of the powers conferred upon the company it had from time to time taken and executed and was holding and executing numerous trusts committed to the company by many persons, copartnerships, unincorporated associations, and corporations by grant, assignment, devise, and bequest and by orders of various courts, and that the company now hold as trustee for many minors, individuals, copartnerships, associations, and corporations resident in the United States and elsewhere many parcels of real estate situated in the various States of the United States and amounting, in the aggregate, to a value exceeding five millions of dollars, the rents and income of which real estate collected and received by said defendant in its fiduciary capacity annually exceeded the sum of two hundred thousand dollars." The bill further shows "that voluntary compliance with the income-tax provisions would expose the company to a multiplicity of suits, not only by and on behalf of its numerous shareholders, but by and on behalf of numerous minors and others for whom it acts in a fiduciary capacity."

Other radical differences appear between the bills under consideration and that in Pollock *vs.* Farmer's Loan and Trust Co., but these are sufficient of themselves to place the two on an entirely different footing. Indeed, it was because of these allegations in the bill in the Pollock case, and which are not found in the bills before us, that the Supreme Court determined it had jurisdiction in that case. The language of the syllabus, which embodies the judgment of the court upon that point, reads as follows: "Such a bill being filed by a stockholder to prevent a trust company from voluntarily making returns for the imposition and payment of a tax claimed to be unconstitutional, and on the further ground of threatened multiplicity of suits and irreparable injury, * * * the court will proceed to judgment on the merits."

A mere allegation in the bill that a multiplicity of suits is threatened is not sufficient to induce a court of equity to take jurisdiction of the suit. The facts must be pleaded in such manner that the court can reasonably infer that such danger is threatened and such suits liable to be brought. This is not only sound in principle, but is sustained by the authorities. Schulenberg-Boeckler Lumber Co. *et al. vs.* Town of Hayward *et al.*, 20 Fed. Rep., 422. An examination of the bills before us in the light of the law governing the matters complained of discloses the fact that no such multiplicity of suits and no such irreparable injury as is contemplated in law or in equity is threatened or is possible.

But we do not concede that even in the Pollock case the Supreme Court holds that the plaintiff, as a matter of course, had the right to enjoin the defendant from paying the tax alleged to be unconstitutional. The Chief Justice, in passing upon this feature of the case, uses this language: "The objection of adequate remedy at law was not raised below, nor is it now raised by appel-ees, if it could be en-

tertained at all at this stage of the proceedings, and so far as
21 it was within the power of the Government to do so the question of jurisdiction for the purposes of this case was explicitly waived on the argument." The court was induced to some extent, no doubt, to hear the case upon its merits on the ground of public policy; at least Assistant Attorney General Whitney was constrained to waive all objection to the form of action on that ground, as is evidenced by the following language used by him in his argument of the case:

"The method by which the questions are presented in the Pollock and Hyde cases was not chosen with the consent of the Government. The corporations have ample remedy at law, either by standing on the defensive or by paying the tax under protest and suing to recover the amount paid. Plaintiffs would be sufficiently protected by decree restraining the corporations from voluntary payment; yet the bills do not allege that the corporations intend to pay voluntarily. No injunction, it is believed, has ever been granted against the payment of a tax to the United States Government or against the execution of a law of the United States on the ground that the law was unconstitutional. It is believed that in no case can such an injunction properly be granted, and it is regarded as important not to break the chain of precedent against such relief. These objections, however, are not jurisdictional in the strictest sense. * * * In view of the great public interest aroused and of the fact that no cases in proper form are now pending, these objections are waived on behalf of the Government, so far as it is in the power of its officers to waive them."

It can avail nothing for me to here quote from the very able dissenting opinion of Justices White and Harlan on this branch of the Pollock case. Their opinion, with authorities cited, leads me to the conclusion that had the question of jurisdiction been raised in the court below and insisted upon in the Supreme Court, the case would not have been heard upon its merits. And in the cases at bar the district attorney, so far as he had the right to do so, the Government not being a party to the suits, raised not only the question of the jurisdiction of the court because the plaintiffs had a plain, speedy, and adequate remedy at law, but insisted that the suits were of a friendly nature, collusive in character, and brought for the sole purpose of conferring jurisdiction upon the court, to the end that the defendants might escape paying the license fee imposed by law; and when all the facts are taken together, as disclosed by the record, some color is lent to the latter contention. Take the case of Corbus *vs.*
The Treadwell Co.; the bill was filed July 17th, the subpœna
22 served July 19th, commanding the defendant to answer the bill within twenty days. No appearance was made by defendant, however, and no pleading filed until November 15th, nearly four months after the filing of the bill, and not until about the time the matter was called up for hearing, when a demurrer was interposed. Counsel for defendant did not contend for his demurrer, made no argument, and filed no brief in support of the same, and in the very nature of the case the interests of the plain-

tiff and defendant are identical. Then, if the object and purpose of the suit is solely to test the constitutionality of the law without first paying into the United States Treasury the amount of the license tax, and there can be no other object, and if the court will sustain the plaintiff and enjoin the defendant as prayed, how is the private citizen to avail himself of a similar remedy? Who shall enjoin him and save him from paying his tax until the constitutionality of the law is determined? And if he cannot avail himself of this manner of suit, why should corporations or copartnerships be permitted to do so? Why should not corporations and individuals have and be permitted to exercise identically the same legal rights and remedies under the law?

It is admitted in all the bills and protests now being considered that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute in question, but they contend that the fines and penalties imposed are so severe they dare not pursue that course. When the Congress passed the law in question they also passed and made a part of this very chapter 11 the following provision, found in section 181:

"That in any case where a conviction occurs, except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this act manifestly too severe, impose a less penalty, either of fine or imprisonment, or both: Provided, that in any such case the court shall cause the reasons for its action to be set forth at large on the record in the case."

It would seem the Congress had in view the provisions in this very chapter, for the minimum penalty in all other criminal cases is extremely low, and while it is not a part of the record of this case, it is a fact well known to every attorney appearing in
23 these cases that the court has repeatedly exercised the power by that section vested in it and has imposed a minimum fine of but one dollar in many cases arising under the provisions of this chapter. In view of the existence of this law, the plaintiffs can have nothing to fear from the severe penalties imposed if they are acting in good faith and with an honest purpose to test the constitutionality of the law, intending if the same shall be sustained, to then comply with its provisions.

As to those persons appearing by protests only, it is the anomalous contention that the papers on file are both applications for and protests against the issuance of licenses—that is to say, they are applications for license if the court shall determine that the businesses engaged in by the plaintiffs respectively subject them to the payment of a tax; and they are protests on the ground that the several lines of business engaged in by protestants are not subject to license and taxation, principally because the law attempting to impose the tax is unconstitutional and void. It is further contended by them that in passing upon all applications for license under this law the court acts judicially, and therefore has the right to and must pass upon the constitutionality of the law itself. It is not necessary to determine whether in passing upon applications for license the

court acts judicially, for if we concede that it does so act, it is nevertheless perfectly clear that the petitioner can only allege in his petition those things required by the act itself to be set up, showing the applicant to be entitled to the license prayed for; and if extrinsic matter is pleaded, such as denying the constitutionality of the law itself, the court is not required, nor in our judgment permitted, to take judicial notice of such extrinsic matter. An officer authorized to issue marriage licenses may be said to act judicially in determining whether the facts set up by the applicant for such license entitles him to receive the same, but it would be hardly contended that the applicant could deny the constitutionality of the law governing such matters and require the officer to determine that question.

24 If this were a court of last resort, we might feel constrained to seek some means by which the constitutionality of the law might be passed upon. The issue should be settled at the earliest possible moment. But we are powerless to finally settle it, even if we would, and we do not believe the question is legally before us. The giving to every one who may feel himself aggrieved the right to enjoin payment of a tax imposed upon him by the Congress is fraught with so much danger, and it is so at variance with the policy of our Government and the decisions of our courts, that we do not feel warranted in seeking for reasons to justify the taking of jurisdiction in these cases, even if any could be found.

The demurrers to the three bills will be sustained; and as to the protests, in so far as they can be construed as an application for license for the respective businesses named, they will be sustained. The protests will be ignored, and unless an appeal shall be taken from the decree rendered in conformity with this opinion within the time prescribed by law, the clerk will be directed and ordered to pay into the United States Treasury the several sums of money paid into the registry of this court by the respective complainants and protestants. Let a decree be entered in conformity herewith.

Endorsed: No. 976. Corbus *vs.* Treadwell Co. *et al.* Opinion of court. Filed December 30th, 1899. Albert D. Elliot, clerk.

25 And afterwards, on February 8th, 1900, the complainant presented his petition for an allowance of an appeal in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

To the Honorable Charles S. Johnson, judge of the United States district court in and for the district of Alaska:

The above-named complainant, conceiving himself aggrieved by the order of the court made and entered by the above-named court in the above-entitled cause under date of Jan'y 2nd, 1900, wherein

and whereby it was and is ordered, directed, and decreed that this cause be dismissed, that a temporary injunction and restraining order heretofore granted be dissolved, set aside, and held for naught, and that the fund now in the hands of the clerk, being the moneys of the defendant The Alaska-Treadwell Gold Mining Company, be paid over by the clerk to the United States Treasury, does hereby appeal to the United States Supreme Court from said order and decree, and particularly from that part thereof dismissing plaintiff's bill and directing said fund in the court to be paid by the clerk into the United States Treasury, for the reason set forth in the assignment of error which is filed herein, and complainant prays that this his petition for said appeal may be allowed, that the amount of the supersedeas bond be fixed by the court, and that the transcript of the records, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court, at Washington, D. C.

Dated February 7th, 1900.

MALONY & COBB,
Solicitors for A. W. Corbus, Complainant.

26 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Co. Petition for appeal. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards, on said Feb'y 7th, the court made the following order, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

On motion of Messrs. Malony & Cobb, solicitors for complainant, it is ordered that the appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein be, and the same hereby is, allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the said United States Supreme Court, at Washington, D. C.

It is further ordered that the bond on appeal be fixed at the sum of $2,000.00, the same to act as a supersedeas bond, and also as a bond in costs and damages on appeal, and that service of all proceedings be had upon the U. S. dist. att'y for Alaska, as well as upon respondent.

Dated February 7th, 1900.

CHARLES S. JOHNSON,
District Judge in and for the District of Alaska.

Endorsed: No. 976. A. W. Corbus *vs.* Alaska-Treadwell Gold Mining Company. Order granting appeal. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, att'ys for plaintiff.

27 And afterwards, on Feb. 8th, the citation in form was duly issued in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Alaska-Treadwell Gold Mining Company, the United States of America and to R. A. Freidrich, United States district attorney for the district of Alaska:

You are hereby cited and admonished to be and appear in the United States Supreme Court, to be held at the city of Washington, District of Columbia, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court in and for the district of Alaska, wherein A. W. Corbus is appellant and you are appellee-, to show cause, if any there be, why a judgment in the said appeal mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 8th day of February, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fourth.

CHARLES S. JOHNSON, *Judge.*

Service of the above and foregoing citation and the receipt of a copy thereof is admitted this the 8th day of February, 1900

M. E. McENANY,
Solicitors for the Alaska-Treadwell Gold M. Co., Appellee and Respondent in the Lower Court.
ROBERT A. FREIDRICH,
United States District Attorney for Alaska.

28 Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Company. Citation. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Maloney & Cobb, solicitors for plaintiff.

And afterwards, on said day, the plaintiff filed his assignment of errors in said cause, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

Comes now the complainant and files the following assignment of errors, upon which he will rely upon his appeal from the decree made by this honorable court on the 2nd day of Jan'y, 1900, in the above-entitled cause:

First. That the court erred in sustaining the demurrer interposed by the defendant to the bill of complaint of plaintiff herein, and holding that the plaintiff had a full, complete, and adequate remedy at law.

Second. That the court erred in dismissing the complainant's bill without considering the case upon its merits.

Third. That the court erred in decreeing that the fund on deposit in the registry of the court be paid into the United States Treasury.

Fourth. That the said court erred in not decreeing that the complainant was entitled to the relief prayed for, and that the act of Congress pretending to impose a tax upon the business of the defendant company was unconstitutional and void.

Wherefore the appellant, complainant in the court below, prays that the judgment and decree of the said court be reversed, and, in order that the foregoing assignment of errors may be a part of the record, the complainant presents the same to the court and
29 prays that such disposition may be made thereof as in accordance with law and the statutes of the United States in such case made and provided.

All of which is respectfully submitted.

MALONY & COBB,
Solicitors for Complainant.

Service of the above & foregoing assignment of errors is hereby admitted to have been duly & legally made within the district of Alaska on this 8th day of February, 1900.

ROBT A. FREIDRICH,
U. S. Dist. Att'y for Dist. of Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Company. Assignment of errors. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff.

And afterwards the complainant filed his bond on appeal, which is in words and figures as follows, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY ET AL.

Know all men by these presents that we, A. W. Corbus, as principal, and B. M. Behrends, as surety, are held and firmly bound unto The Alaska-Treadwell Gold Mining Company, defendant above named, and unto the United States of America in the sum of $2,000.00, two thousand dollars, to be paid to the said obligees, their successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated 10th day of February, 1900.

Whereas the above-named complainant, A. W. Corbus, has taken an appeal to the Supreme Court of the United States to reverse the decree in the above-entitled cause in the district court of the United States in and for the district of Alaska:

Now, therefore, the condition of this obligation is such that if the above-named complainant, A. W. Corbus, shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; other-
30 wise to remain in full force and virtue.

A. W. CORBUS.
B. M. BEHRENDS.

The above and foregoing bond is hereby approved this 15th day of February, 1900.

CHARLES S. JOHNSON,
District Judge of Alaska.

Endorsed: No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, vs. The Alaska-Treadwell Gold Mining Company. Bond. Malony & Cobb, solicitors for plaintiff. Filed Feb. 15, 1900. Albert D. Elliot, clerk.

31 And afterwards the following order was made and entered of record, to wit:

In the United States District Court for the District of Alaska.

A. W. CORBUS
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY.

This cause coming on to be heard upon the motion of the plaintiff, by his solicitors, Malony & Cobb, for an order extending the time within which to file the transcript herein in the Supreme Court, because it is the opinion of the court that the said transcript cannot be made up and transmitted to Washington in the time

allowed by law, it is ordered that said time within which said transcript shall be filed *by* the Supreme Court be, and the same is hereby, extended to and including the 8th day of May, A. D. 1900.

Done in open court this the 22 day of March, 1900.

CHARLES S. JOHNSON, *Judge.*

"Endorsed:" No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* Alaska Treadwell Gold Mining Co. Order extending time to file transcript. Filed March 22, 1900. Albert D. Elliot, clerk.

32 UNITED STATES OF AMERICA, } *ss:*
District of Alaska, }

I, Albert D. Elliot, clerk of the United States district court in and for the district of Alaska, do hereby certify that the above and foregoing and hereto annexed 32 pages are a full, true, and correct transcript of the records and files of all the proceedings in the therein-mentioned case of A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Company, and the same is made up and certified in accordance with the order of the court allowing an appeal in said cause and pursuant thereto.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court of Alaska this 2nd day of April, 1900.

[Seal United States District Court, Alaska.]

ALBERT D. ELLIOT, *Clerk.*

33 In the United States District Court for the District of Alaska.

A. W. CORBUS }
vs.
THE ALASKA-TREADWELL GOLD MINING COMPANY. }

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Alaska Treadwell Gold Mining Company, the United States of America, and to R. A. Freidrich, United States district attorney for the district of Alaska:

You are hereby cited and admonished to be and appear in the United States Supreme Court, to be held at the city of Washington, District of Columbia, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court in and for the district of Alaska, wherein A. W. Corbus is appellant and you are appellee, to show cause, if any there be, why a judgment in the said appeal mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 8th day of February, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fourth.

CHARLES S. JOHNSON, *Judge.*

Service of the above and foregoing citation and the receipt of a copy thereof is admitted this the 8th day of February, 1900.

M. E. McENANY,
Solicitors for the Alaska-Treadwell Gold M. Co., Appellee and Respondent in the Lower Court.
ROBT A. FREIDRICH,
United States District Attorney for Alaska.

34 [Endorsed:] No. 976. In the United States district court in and for the district of Alaska. A. W. Corbus, plaintiff, *vs.* The Alaska-Treadwell Gold Mining Co. Citation. Filed Feb. 8, 1900. Albert D. Elliot, clerk. Malony & Cobb, solicitors for plaintiff: offices at Juneau, Alaska.

35 [Endorsed:] No. 976. A. W. Corbus *vs.* The Alaska-Treadwell Gold Mining Company. Transcript on appeal.

Endorsed on cover: File No., 17,739. Alaska D. C. U. S. Term No., 625. A. W. Corbus, appellant, *vs.* The Alaska Treadwell Gold Mining Company. Filed May 5th, 1900.

FILED
APR 12 1901
JAMES H. McKENNEY,

SUPREME COURT

Of the United States.

OCTOBER TERM, 1900

No. ~~17,739~~ 266.

A. W. CORBUS, Appellant

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY, Appellee.

Appeal From the U. S. District Court for Alaska.

Brief for Appellant, A. W. Corbus

MALONY & COBB, of Counsel

Wm. W. DUDLEY, and L. T. MICHENER,

Solicitors for Appellant.

Daily Dispatch Print, Juneau

SUPREME COURT

Of the United States.

OCTOBER TERM, 1900

No. 17,739.

A. W. CORBUS, Appellant

vs.

THE ALASKA TREAD WELL GOLD MINING COMPANY, Appelle.

Appeal From the U. S. District Court for Alaska.

Brief for Appellant, A. W. Corbus

MALONY & COBB, of Counsel
Wm. W. DUDLEY, and L. T. MICHENER,
Solicitors for Appellant.

Statement of the Nature and the Result of the Suit.

A. W. Corbus, the appellant, and complainant in the lower court filed his bill in equity against the appellee, the Alaska

Treadwell Gold Mining Co., to restrain and enjoin it from voluntarily applying for a license and paying the tax, provided for by the Act of Congress of March 3rd, 1899, entitled "An Act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district."

The bill, omitting formal parts is as follows:

1.

That the said Alaska Treadwell Gold Mining Company is a mining corporation incorporated under and pursuant to the laws of the State of Minnessota, and is engaged in mining and milling ore in the District of Alaska, on Douglas Island, Alaska, and has an office and agent in the District of Alaska, on the said Douglas Island, towit, one J. P. Corbus, who has the general supervision, control and management of the affairs of said company in the said District of Alaska.

2

That in the prosecution of said business of mining and reducing ore and extracting therefrom the gold therein contained, the said company owns and operates five hundred and forty stamps for the crushing and reduction of its said ore. Said company also under and pursuant to its said charter, owns a mercantile establishment and is engaged in the mercantile business to a large extent, towit, about the sum of fifty thousand dollars in volume per annum, which said mercantile establishment is situated on Douglas Island, Alaska, and said business is being run and engaged in in said District of Alaska.

3.

Your orator further says that the capital stock of said company is the sum of five million dollars, divided into two hundred thousand shares of the par value of twenty-five dollars per share, and your orator is the owner of one hundred shares of said capital stock; that the balance of said capital stock is owned and divided

among a large number of persons and corporations, nearly all of whom are non-residents of the District of Alaska, and are too numerous to all be made parties hereto, and this suit is brought by your orator in his own behalf and in behalf of all other stockholders of said company similarily situated to himself.

4

The general control of the affairs of said company is entrusted to a board of directors who reside in San Francisco, State of California, and who are non-residents of the District of Alaska; that the complete control and management of the affairs of said company in Alaska is under the supervision and control of its general superintendent and manager, J. P. Corbus.

5.

Your orator further says that the said company, acting by its said general superintendent in Alaska, which action is within the scope of the general authority and power conferred upon him, is purposing and intending, and unless restrained by this Honorable Court, will apply to this Honorable Court for a license, and tender and pay to the clerk of this court for such license, the sum of three dollars each upon said stamps, and the sum of two hundred and fifty dollars for a license to engage in said mercantile business for the year beginning July 1st, 1899, and ending June 30th, 1900, together with a clerk's fee of five dollars for issuing said license, making in all the sum of eighteen hundred and seventy-five dollars which said payment and expenditure of the moneys of said company said company is purposing and intending to make under and pursuant to the provisions of chapter 44 of the act of March 3rd, 1898, of the Congress of the United States, entitled "An Act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said district.

6.

Your orator further shows and charges that the provisions of

said act requiring the payment of said tax of three dollars per stamp per year by said company, and the sum of two hundred and fifty dollars per annum for said mercantile establishment, is contrary to the Constitution of the United States, and null and void, and of no force and effect, for the reason that said tax is not apportioned according to the population of the citizens of the United States throughout the United States, and for the further reason that said tax is not uniform throughout the United States, but is a tax for national purposes, solely upon the citizens of the United States residing and doing business in the District of Alaska. Your orator further shows that said tax is exorbitant in its provisions, and so uncertain and indefinite in its terms as to said mercantile establishment, that it is impossible, without paying the maximum amount of tax therein laid upon such mercantile establishments, to certainly avoid the pains and penalties by said act attempted to be imposed, and if said act is complied with, it will result in the taking of the property of your orator and the others in whose behalf he brings this suit, for public purposes and without adequate compensation therefor, and without due process of law. And your orator further says that such tax so required as a condition precedent to authorize the engaging in business aforesaid is void and of no force or effect, because forbidden especially by the first clause of section eight of article one of the Constitution of the United States; by the fourth clause of section nine of article one of said constitution, and by the sixth clause of section nine of article one of said constitution. Your orator further shows that said pretended act of congress, so far as it attempts to lay and collect the said tax, is contrary to and forbidden by the fifth amendment to the Constitution of the United States, in that it deprives your orator and other persons similarly situated of their property, without due process of law, and takes private property for public uses, without just compensation, or without any compensation whatsoever, and is also forbidden by and is contrary to the first section of the fourteenth amendment to the constitution of the United States

7.

Your orator further shows that said business of quartz mining and operating a quartz mill and mercantile establishment are lawful and legitimate business enterprises which citizens of the United States and Alaska are entitled, under said constitution to pursue with the same privileges and amenities as citizens of the United States residing elsewhere.

Your orator further shows that this suit is not a collusive one, brought to confer jurisdiction of the case upon this court, of which it would not otherwise have cognizance; that your orator has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but has made such request of the officers or agents of said company controlling its business in Alaska; but they have failed and refused not to make such application and to pay such tax, for the reason that, though they doubt the constitutionality of said law, the pains and penalties imposed by said act for the omission so to do, are so severe that said company and its said officers and agents fear, and have reason to fear the great loss and injury in defending prosecution that might be brought against it for the failure to comply with said law, that they deem it better to submit to the illegal tax, than to incur the consequences of the failure to comply with it That your orator is advised that there is no procedure provided by law whereby said company could test the validity of said law and the constitutionality of said tax, without incurring the pains and penalties therein provided for the violation thereof, inasmuch as the said act requires the voluntary payment of the tax imposed, under a penalty of heavy forfeiture and fines for the failure to make such voluntary payment. That the said company, in view of the foregoing, has refused and still refuses and intends omitting to compiy with complainant's demand to refuse to pay said tax, and has resolved and determined and intends to comply with all and singular the provisions of said chapter 44 of said act of congress, and to pay said tax upon its stamps

and upon its said mercantile establishment, amounting to the said sum of eighteen hundred and seventy-five dollars for the said year, and to continue the payment of a like or greater sum for each year hereafter.

9.

Your orator further shows that if said company and its officers, as they have proposed, and declared their intention to do shall pay said tax, the assets of the said company will be thereby diminished and lessened, as well as the dividends to be declared upon the stock thereof, and the value of the shares of said company, including the shares owned by your orator, and all others in whose behalf this suit is brought; and your orator further shows that this suit involves more than the sum of five thousand dollars; that unless the company should comply with said act, or this court grant the relief herein prayed for, the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened to the great and irreparable injury and damage to your orator and other shareholders in said company.

10.

Your orator further shows that this is a suit of a civil nature in equity and arises under the constitution and laws of the United States, and draws in question the validity of an act of congress and the authority exercised under the United States; and that your orator has no plain, speedy and adequate remedy at law.

WHEREFORE, your orator prays,

First: That it may please Your Honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this Honorable Court, directed to the said Alaska Treadwell Gold Mining Company, commanding it, on a certain day, and under a severe

penalty, under the said writ, to be answered by and appear before Your Honor in this Honorable Court and then and there full, true and perfect answer to make of all and singular the premises, and further stand, perform and do such further orders and directions and decree as Your Honor shall deem meet and shall be agreeable to equity and good conscience.

Second: That said provisions of chapter 44 of the act of congress of March 3rd, 1899, requiring the said company to apply for a license and pay the said tax, as a condition precedent to engaging in its said business, be declared contrary to the provisions of the Constitution of the United States, and null and void.

Third: That this Court issue its most gracious writ of injunction, restraining the said company, its officers, agents and employees from applying for said license and paying said tax.

Fourth: That if the Court shall deem it proper until the final determination and hearing of this cause, that it make such order or orders as it may deem proper, whereby the said sum necessary in payment of said tax may be paid by said company into the registrar of the Court, to abide the final determination of this action and the adjudication of the validity of said statute.

Fifth: And your orator further prays for such other and further relief as in equity and good conscience it may show itself entitled.

[Printed record pp 1 to 5.]

A restraining order was granted on motion of complainant [Pr. R. p 6–7] which restrained the defendant from paying the money mentioned in said bill upon the application for license but required that it be paid into the registry of the court to abide the result of the suit, and that upon payment into the registry of the

court, the license might be issued by the clerk. A copy of the complaint, motion and other proceedings were required to be served upon the U. S. District Attorney for Alaska. The defendant appeared in obedience to a subpœna and filed a general demurrer. [P. R. p 9]. The matter came on for hearing, and was argued with several other causes not now before the court, the U. S. District Attorney appearing as amicus curiae only. The Court sustained the demurrer, dismissed the bill, and ordered the money in the registry of the court to be covered by the clerk into the U S. treasury. (P. R. p 10). The Court's views are stated at length in an opinion filed in the case. [P. R. pp 11 to 17]. From the final decree dismissing his bill of complaint and ordering the money in the registry of the court covered into the treasury, appellant filed his petition for appeal and supersedeas, (P. R. p 17–18) which was allowed and supersedeas bond fixed at $2,000 (P. R. 18) citation was issued and served (P. R. p 19), assignment of errors filed (P. R. p 19-20), a supersedeas bond given (P. R. p 21), the transcript of the record filed here, within the time allowed by order of the court (P. R. p 21-22) and the cause is now here presented for correction and revision.

The assignments of error [P. R. p 20] go to the ruling of the court on the demurrer specifying errors as follows:

1st. In holding that the complainant had a full, complete and adequate remedy at law.

2nd. In dismissing plaintiff's bill.

3rd. In decreeing that the fund on deposit in the registry of the court be paid into the treasury of the United States.

4th. In not decreeing that plaintiff was entitled to the relief prayed for, and that the act of congress imposing a tax upon the defendant was unconstitutional and void.

As the principal question involved in this appeal will proba-

bly be settled by the decisions in several causes now under advisement by the court, a lengthy discussion of it is not deemed necessary here. We will only briefly indicate the theory upon which the plaintiff proceeded and upon which he believes he is entitled to recover, presenting the several questions ruled upon by the court in the order indicated in the assignment of error.

1.

DID THE PLAINTIFF HAVE A PLAIN, SPEEDY, AND ADEQUATE REMEDY AT LAW?

The decision of the case, judging from the opinion of the court, rests upon the simple proposition that the plaintiff did have a plain, speedy, and adequate remedy at law. The Court assumes that it is "admitted in all the bills and protests now being considered, that the respective plaintiffs have a plain remedy at law by resisting the enforcement of the statute, but they contend that the fines and penalties imposed are so severe, they dare not pursue that course" [Pr. R p 16.] This may have been true with respect to the protests then being considered by the Court. It is certainly not true with respect to the bill in this case. The allegation is that the defendant "is purposing and intending, and unless restrained by this Honorable Court will" pay said sum of $1875. See paragraph 5 of bill SUPRA]. The allegations in the eighth paragraph of the bill, which the learned trial judge evidently had in mind when he used the language quoted, has application only to the reasons why the DEFENDANT refused to comply with the PLAINTIFF'S request, not to pay the tax. It was the defendant, not the plaintiff, who "dared not" take the risk of the fines and penalties imposed by the act for a failure to comply with its terms.

Again it is manifest that the remedy at law suggested by the learned judge, viz: to resist the payment of the tax, can have no application to the plaintiff in this suit. He was not taxed; no fines and penalties were threatened against him. The tax was laid

upon the defendant corporation, and those in control of its affairs in Alaska, were proceeding to pay out its funds rather than take the risk of the excessive fines, in the event the law was held valid, if they neglected a voluntary compliance with its terms. It is difficult to see how a stockholder could under this state of facts protect the funds of the company except by a procedure in equity.

The Court then attempts to draw a distinction between this case and that of Pollock vs. Farmers Loan and Trust Co., 156 U. S. 129 and 158 U. S 601. We fail to perceive the distinction. In each, the bill seeks to restrain the defendant corporation from misapplying trust funds; funds in the one case held by the company for the benefit of numerous persons for whom it acted in a fiduciary capacity, as well as its shareholders—in the other for the shareholders alone. The principal is identical, viz: the mis-application or wasting of a trust fund, But the case at bar is stronger than the case of Pollock vs. Farmers' Loan and Trust Co. in one respect. As was suggested by counsel for the government in that case, the bill did not allege that the corporation intended to pay the tax voluntarily. In that case, the rights of the plaintiff would be protected by the resistance of the defendant corporation to the illegal exaction of the government. In this case, the allegation is that the voluntary payment is purposed and intended and will be made by the Court.

We think it clear that the Court was in error in holding that the plaintiff had any remedy at law. The DEFENDANT could have refused to pay, and resisted a prosecution at law; but the PLAINTIFF had no such right. His only remedy was to restrain the wasting of the company's funds. The proceeding is one which this Court has in several cases upheld. THOMPSON VS. PAC. RY. CO. 9 WALL. 79. POLLOCK VS. FARMERS' L. & T. CO. 156 U. S. and authorities there cited.

In the latter case, Mr. Justice White in his vigorous dissent from the opinion of the majority of the Court, in contending that the bill should have been dismissed without passing on the merits

of the case, seems to rest his contention solely upon the ground that section 3226 of the Rev. Stat. of the U. S. gives a right of action for taxes paid under protest; and that section, 3224, forbids a suit for the purpose of restraining the assessment or collection of any tax. But we submit that neither of these sections has any application to the case at bar. The right of action given by section 3226, is given where the collector is proceeding to enforce the payment of the tax. In such a case it may be paid under protest and suit filed to recover it. Section 3224 is in pari materia. It simply forbids the courts restraining the assessment and collection of taxes, because a legal remedy is provided which the congress intended to be exclusive. But in the case at bar, no provision is made for the collection of the tax. The law simply said to the defendant corporation "abandon your business of mining and milling ore, or pay the government $1875 per annum. You are not forced to pay the sum. No collector will not seize your property if you fail to pay it. It's payment is optional. You make it voluntarily if you make it at all. But if you carry on your business without paying it you will be fined and imprisoned." It needs no argument to show that the sections quoted have no application to a case like this, or that the plaintiff had any legal remedy whatever, as will be apparent from a careful examination of the law in question.

II.

THE COURT ERRED IN DECREEING THAT THE MONEY IN THE REGISTRY OF THE COURT SHOULD BE PAID INTO THE TREASURY OF THE UNITED STATES.

The Court sustained the demurrer for want of jurisdiction and then proceeded to render a decree which in effect gave the government the subject matter of the litigation. The tax was paid into Court, at the beginning of the suit, and the papers all served upon the U. S. Attorney, who declining to make the government a party nevertheless argued the case for the government, and the Court

rendered a decree that the money should be paid to the govern ment. This was erroneous on fundamental principles.

III.

This brings us to THE QUESTION in the case:

IS THE ACT OF CONGRESS IMPOSING A LICENSE TAX O OCCUPATIONS IN ALASKA, UNCONSTITUTIONAL AND VOID?

The law in question is found in sections 460, 461 and 463, the said act of March 3rd, 1899.

Section 460 is as follows: "That any person, or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a District Court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, towit:" Then follows a list of 42 named callings and occupations embracing about all the useful and ordinary occupations of man outside of agriculture and the law. Among the occupations taxed are "mines: quartz mills, three dollars per stamp per year" and mercantile establishments, doing a business of $50,000 per annum, two hundred and fifty dollars," which are the taxes complained of in the bill.

Section 461, provided, "that any person, corporation, or company doing or attempting to do business in violation of the provisions of the forgoing section, or without having first paid the license therein required shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined, for the first offense, in a sum equal to the license required for the business, trade or occupation; and for the second offense

a fine equal to double the amount of the license required; and for the third offense, three times the license required, and imprisonment for not less than thirty days nor more than six months; provided, that each day that business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense."

Section 463, provides for the administration of the law, and requires that "all moneys received for license by him or them (Clerk of the Court) under this act shall be covered into the treasury of the United States under such rules and regulations as the Secretary of the Treasury may prescribe."

It will be observed in the first place that the law is not a police regulation. It is a burden laid on every useful occupation practicable in Alaska, from sawmills to steamships, from peanut stands to stamp mills. The money goes into the national treasury for the benefit, and as a part of the revenues of the general government. It is neither to be expended for the benefit of Alaska, nor held in trust for Alaska. There is no restriction nor regulation of the several lines of business had, or intended, nor are the lines of business taxed such, as require police regulation or restraint; nor is the exorbitant sum required—$1620, for instance on one stamp mill as in the case at bar, consistant with the idea of police regulation. It is therefore a revenue law, a tax pure and simple. (Cooley on Tax. p 408). According to Mr. Cooley, it is an excise tax (Cooley on Tax p 3) though it is not very material for the purposes of this discussion what the tax may be called. If it is void as an excise, duty, or impost, for want of uniformity, it is equally void as a direct tax because not laid in accordance with the rule of apportionment.

The tax by its terms is limited to business carried on in the District of Alaska. We shall assume as too plain for argument that had the law in question been passed with reference to one of

the States—If congress, for instance, had enacted, that any person, corporation, etc., carrying on any of the lines of business specified, in Massachusetts, or Maryland should first apply for a license, and pay the tax specified --it would have been void, because contrary to the first clause of Sec. 8 of Article 1 of the Constitution of the United States, if it was held to be a duty, import or excise; and contrary to the fifth clause of Section 9 of Article 1 of the Constitution, if a direct tax. This being a tax laid upon the people of Alaska, not for Alaska alone, but for the United States, the question narrows itself down to this:

IS CONGRESS BOUND BY THE CONSTITUTION IN LAYING AND COLLECTING TAXES FOR NATIONAL PURPOSES IN ALASKA, AS IT WOULD BE IN ONE OF THE STATES?

In examining this question, it may be well to briefly review the legislation of congress relating to Alaska, and bearing on the question

By Article III of the Treaty of Cession, proclaimed June 20th 1867. the inhabitants of Alaska, (excepting uncivilized native tribes) were admitted to all the rights, advantages, and immunities of citizens of the United States. This provision we contend necessarily put in force in, and extended over Alaska, the Constitution of the United States, wherein alone, those "rights, advantages, and immunities" are set forth and guaranteed.

July 27th, 1868, "The laws of the United States, relating to customs, commerce and navigation" were extended to Alaska. (St. at L. vol. 15 Chap. 273. sec. 1.) Did the laws thus extended to Alaska include that part of the customs laws found in the Constitution? If it did not, where is the restriction found?

The next act of congress bearing on the question, was the Act of May 17th, 1884, [24 Stat. at Large, Chap. 53] commonly called the Organic Act, which established an organized government for

the District with an Executive and Judiciary departments but no legislative, the laws of Oregon, so far as practicable and not inconsistent with the laws of the United States being given instead. On that date then, if never before, Sec. 1891 of the Rev. Stat. of the United States became the law of Alaska, whereby the constitution was extended over and became the supreme law of the land in Alaska as well as in New York or Pennsylvania. The whole act as well as subsequent legislation, recognized the constitution as the law of Alaska. Again, it may be asked, is not the constitution the law of Oregon? Is there anything in the constitution that makes it locally inapplicable, and thereby excludes it from the laws of Oregon, extended to Alaska? The congress evidently considered either that the constitution was already in force, or that it was extended to Alaska by that act. For in the same section [par. 7] of this ACT in defining the exclusive jurisdiction of the District Court, we find such exclusive jurisdiction given "IN ALL CASES—involving the constitotionality of a law." If the constitution had no force or effect in Alaska, how could such a question arise? The constitutionality of a law can only be drawn in question in a court, where the constitutional limitations upon the law-making power exists. The only law making power in Alaska is the congress. The only law the conatitutionality of which can be drawn into question in Alaska is one passed by congress. And congress again recognized that the constitution was in full force and effect in Alaska in the ACT of June 6th, 1900, "making further provision for a civil government for Alaska," etc. In Sec. 367, of part III of that act, "so much of the common law as is applicable and not inconsistent with the constitution of the United States," etc., "is adopted and declared to be the law within the District of Alaska." We are not therefore met with the troublesome question as to whether or not the constitution extends to the Territories of the United States EX PROPRIO VIGORE. We have rather, a case where for sixteen years, at least, the constitution has been in full force and effect, recognized as the law by the congress, and courts established and invested with jurisdiction to pass upon the constitutionality of laws enacted by congress.

But it may be argued that congress itself extended the having constitution to Alaska, has the power to withdraw it; that an act of congress contravening the provisions of the constitution is an implied withdrawal of so much of the constitution as it contravenes. Merely to state such an argument, we believe, sufficiently refutes it. A constitution is in its very nature superior to the legislative, supreme in the land, ruling alike the governors and the governed. If it, or any of its provisions, can be set aside at the will of any power short of the people, then it is not a constitution at all. If congress can withdraw it, when its provisions are once extended to the territory, then the CONSTITUTION was never in force in such territory. What was supposed to be the constitution was merely a legislative enactment of the provisions contained in the instrument known elsewhere as the constitution. But in the territory, it is not, and never was the constitution. For the legislative power to withdraw or nullify the constitution and the constitution itself cannot co-exist. If the constitution exists it is supreme. If the instrument called the constitution is subject to legislative control, it is not the constitution in fact. We have been arguing the question on the hypothesis that congress had extended the constitution to Alaska the same as it has Arizona and New Mexico; that beingonce extended, it controlled congressional legislation in Alaska as well as in the States. But there is another view of the question, independent of the fact as to whether congress has or has not extended the provisions of the constitution to Alaska. That question may be stated thus:

CAN CONGRESS ANYWHERE ENACT A LAW EXPRESSLY OR IMPLIEDLY FORBIDDEN BY THE CONSTITUTION?

While the constitution contains many express limitations upon the things that congress shall not do, it is something more than a summary of limitations upon governmental powers. Congress is the creature of the constitution, and has, and can exercise only such powers as are expressly or impliedly therein conferred upon

it. It is and can be nowhere supreme—it can nowhere exercise any power not conferred upon it by the instrument by which it was created and from which it derives all its powers. If it goes into a foreign land, it goes by authority of the constitution; if it acquires it under the same paramount authority. Congressional action in the territory of the United States must be under authority conferred by the constitution or such action has no warrant in law; for it has no authority not delegated by the constitution. This authority to deal with the territories is certainly very broad. It may give them an organized form of local self government, or govern them directly by congressional legislation. or not govern them at all. It may give their inhabitants such political rights as it sees fit, or in its discretion deny them all political rights, and this regardless of whether the inhabitants of such territory are citizens of the United States or not. The United States may (we concede for the sake of the argument) acquire new territory and hold such territory, and govern it without ever admitting its inhabitants to the rights and priveleges of citizenship. But when territory has been acquired and its inhabitants admitted to all the rights, priveleges, and immunities of citizens; and when it has been peopled by thousands of native born citizens who have emigrated to such territory from the various states of the union, then those fundamental rights of persons and property guaranteed by the constitution are held beyond the power of congress to deny, or modify. As was said by this Court in SCOTT VS. SANDFORD, 19 How. 393. "But the power of congress over the person or property of a citizen can never be a mere discretionary power under our constitution and form of government. The powers of the government and the rights and priveleges of the citizen are regulated and plainly defined by the constitution itself. And when the territory becomes part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its power over the citizen strictly defined, and limited by the constitution from which it derives its existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. It has no power

of any kind beyond it; and it cannot, when it enters a territory of the United States, put off its character, and assume discretionary or despotic powers which the constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the constitution. The territory being a part of the United States, the government and the citizen both enter it under the authority of the constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved."

"The powers over persons and property of which we speak are not only not granted to congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a territory, so far as these rights are concerned, on the same footing with citizens of the United States, and guards them as firmly and plainly against any inroads which the general government might attempt, under the plea of implied or incidental powers."

This same doctrine is recognized in many other decisions of this Court, a few of which we will content ourselves with citing, Mormon Church vs. United States, 136, U. S. I; National Bank vs. Yankton Co. 101, U. S. 129; Ins. Co vs. Canter I Pet. 511: United States vs. Grettiot, 14 Pet. 526; Cross vs Harrison, 16 How. 164; Murphy vs. Ramsay, 114 U. S. 15.

In the latter case, the Court say: "The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty, which restrain all the agencies of government, state and national; their

political rights are franchises which they hold as privileges in the legislative discretion of the United States."

This brings us back to the law in question, and the constitutional power of the congress to lay and collect taxes for the National Government. It is the greatest power, affecting the citizen, that the government has. It bears not upon his political rights or status, but upon his property. It is a property right. that is affected. And when congress lays its hand upon the property of the citizen and takes it for the use of the government, it must find its warrant for so doing in the constitution, whether that property be situated in a territory or in a State. Wherever it be, the citizen's right to, and in, his property, is alike under the shield of the constitution, and beyond the reach of arbitrary confiscation or illegal exaction. If confiscation or exaction of the means of the citizen is sought under the guise of a tax, it must be a tax authorized by the constitution. That instrument expressly confers upon congress the power of taxation without limitation as to amount, or as to the objects to be taxed; but along with the power conferred the limitation is imposed. If it is a duty, impost, or excise, it must be uniform throughout the United States; if it is a direct tax it must be laid by the rule of apportionment. And this limitation being for the protection of the property rights of the citizen is as as binding in the territories as in the States. Otherwise it necessarily follows, that congress may impose such taxes upon Alaska for the benefit of the National Government as will result in confiscating all the property of its inhabitants and to that extent decrease the burdens of government to the rest of the people of the United States. This burden, the constitution, in effect, provides, shall be borne equally and uniformly by all the people. No tax shall be laid on one portion of the people that is not laid upon all. As was said by Chief Justice Marshall, in LOUGHBROUGH VS BLAKE, 5 WHEAT. 319. "The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American Empire? Certainly this

question can admit of but one answer. It is the name given to our great republic, which is composed of states and territories. The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our constitution, that uniformity in the imposition of imposts, duties, and excises shall be observed in the one than in the other."

This is the rule of natural justice; it is the rule of the constitution. To hold that this constitutional rule is not binding upon congress in laying and collecting the national revenues in Alaska, is to break down every safeguard of the citizen in Alaska, in the enjoyment of his property, that is thrown round him by the constitution, and place every dollar that he owns at the disposal of congress, according to its pleasure. Nay, more, personal rights—the right of the citizen to life, liberty, and the pursuit of happiness, are not more sacredly guarded by the Supreme Law of the land than are the rights of property. If the latter fails, the former are swept away. Congress may deny us the right of trial by jury, may quarter soldiers upon us in time of peace, may invade any one of the private rights of citizens of Alaska, which the constitution places beyond its reach in the States.

The view here contended for is not in conflict with the right of congress to lay a local tax for local purposes upon a Territory or District. This we may concede it may do, occupying as it does, the place of a local legislature for such Territory or District, as well as being a national legislature for national purposes. But there is a distinction to be observed between legislation in its capacity of a local legislature, and legislation enacted in its capacity as the national congress. Taxation in the one case would be a local burden for a local purpose limited by the local necessities. In the other, it is the burden of the national taxes laid in one locality and on one part of the people with greater weight than on the rest—a violation of the rule of uniformity.

We have not deemed it necessary or proper in this brief, to

do more than outline the principles of law contended for, for the reason that before this case can be submitted, the question here presented will have been before the Court on briefs and arguments of the ablest counsel of the nation. In view of this fact, we deem any more extended discussion superfluous. We submit the case in the confident hope that no mere technicality will prevent the Court from passing upon the merits of the case, and that the blight which has been laid upon the business and prosperity of this new northern land, in the form of a tax under which more than forty dollars per capita per annum, IN ADDITION TO THE ORDINARY TAXES OF THE NATIONAL GOVERNMENT, are exacted for the benefit of the National Treasury, will be forever removed.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed April 24, 1901.

No. 266.

A. W. CORBUS, *Appellant,*

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY, *Appellee.*

Appeal from the District Court of the United States for the District of Alaska.

APPELLANT'S ADDITIONAL BRIEF.

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NORMAN T. ELLIOTT PRINTING CO

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APPELLANT'S ADDITIONAL BRIEF.

This brief is in addition to the one heretofore filed on behalf of the appellant, and it relates particularly to the point that the Constitution of the United States has been extended over the District of Alaska.

We assume that the facts stated in the bill of complaint conferred equitable jurisdiction on the court below. We assume also, for the sake of this argument, that the Constitution of the United States would not now be operative in the District of Alaska had it not been extended there by express treaty provision or congressional enactment.

I.

The Treaty.

The treaty with Russia for Alaska was proclaimed by the United States June 20, 1867. It is to be found in 15 Statutes, pages 539 to 544. Article 3, on page 542, contains the following language:

> "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion." * * *

This article guarantees to those who remain in the ceded territory the following:

First. All the rights, advantages, and immunities of citizens of the United States.

Second. That they shall be maintained and protected in the free enjoyment of their liberty, property, and religion.

These guarantees are in the language of the Constitution and are evidently predicated on it. We submit that this language carried the general provisions of the Constitution to the territory ceded.

II.

The Act of 1884.

May 17, 1884, Congress passed an act "providing a civil government for Alaska," 23 Stats., 24.

(*a*) The first section of the act prescribes that "the territory ceded to the United States by Russia * * * shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said District is hereby established at Sitka."

(*b*) The act then provides for the appointment of a governor and prescribes his powers and duties, section 2. He is charged with the interests of the United States Government that may arise within his district. He may grant reprieves for offences committed against the laws of the district, or against the United States, until the decision of the President thereon shall be made known. He shall be *ex officio* comander-in-chief of the militia of the district, "and he shall perform generally in and over said district such acts as pertain to the office of governor of a territory, so far as the same may be made or become applicable thereto."

(*c*) It establishes a district court with the civil and criminal jurisdiction of district courts of the United States, and the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts, section 3.

(*d*) The act provides for a clerk of the court, a district attorney, and a marshal, section 4.

(*e*) It authorizes the President to appoint four commissioners for the district, who shall have the jurisdiction and powers of commissioners of the United States circuit courts; the powers of justices of the peace under the laws of Oregon; jurisdiction of testamentary and probate matters; the powers of notaries public, and the power to grant writs of *habeas corpus* returnable before the district judge for the District, section 5.

(*f*) The marshal is given the general authority and powers of the United States marshals of the states and territories, section 6.

(*g*) Writs of error in criminal cases are to issue to the district court from the United States Circuit Court for the District of Oregon, and the final judgments or decrees of said circuit and district court may be reviewed by this court as in other cases, section 7.

(*h*) The act also created a land district for the District of Alaska, made the mineral land laws of the United States applicable thereto, denied the application of the general land laws of the United

States, and prohibited a legislative assembly and a delegate in Congress.

(*i*) Section 7 of the act provides:

> "That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States."

Of this statute generally it may be said:

First. That it created an organized government for the District of Alaska, and it seems to us to follow that the Constitution of the United States has been in force and effect in the District of Alaska by virtue of the act aforesaid since May 17, 1884.

Second. The laws of Oregon, generally speaking, have been in force in the District of Alaska since the date aforesaid. It can not be denied that the Constitution of the United States operates upon the laws of Oregon and the laws of Oregon operate upon the Constitution of the United States. Whatever rights, privileges, advantages, and immunities the citizens of Oregon had by virtue of their laws and their relations to the United States, just such rights, privileges, advantages, and immunities have the citizens of the District of Alaska thereby enjoyed since May 17, 1884.

III.

The Acts of 1898 and 1899.

(*a*) By the act of May 14, 1898, Congress extended the homestead laws and provided for the right of

way for railroads in the district of Alaska (30 Stats., 409), and section 14 of that act extended the bonded warehouse privileges to the ports in Alaska.

(*b*) Section 2 of the bankruptcy act of July 1, 1898, 30 Stats., 545, makes the bankruptcy laws of the United States applicable to the District of Alaska, and provides that the United States courts in the district shall be courts of bankruptcy.

(*c*) The sundry civil appropriation bill for March 3, 1899, 30 Stats., 1097, extended the public land survey system to the District of Alaska.

IV.

The Criminal and Civil Codes.

(*a*) By the act of March 3, 1899, 30 Stats., 1253, Congress provided a criminal code for the District of Alaska, evidently constructed with due regard to the guarantees and prohibitions of the Constitution of the United States, and treating it as applicable to that District.

(*b*) The next Congress, by the act of June 6, 1900, First Session, Laws, page 321, chap. 786, by an act, "making further provision for the civil government for Alaska, and for other purposes," provided that the territory ceded by Russia "shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided." This act provides for the appointment of governor, notaries public, surveyor-general, judges, clerks, and other court and local officers.

prescribes their powers and duties, and then furnishes a code of civil procedure for the District.

This act, so far as it relates to the powers and duties of officers, is like the act of 1884, with a few exceptions:

(*a*) The commissioners are authorized to perform all the duties and exercise all the powers conferred on the United States commissioners by the general laws of the United States, and the special laws applicable to the District, section 6.

(*b*) Three clerks are to be appointed by the court, and they are authorized to perform the duties required of clerks of the United States courts in other districts, and such other duties as may be prescribed by law, section 7.

(*c*) Three district attorneys shall be appointed, who shall perform the duties required of United States district attorneys in other districts, and such other duties as may be required by law, section 8.

(*d*) The governor, surveyor-general, attorneys, judges, and marshals shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for a term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause, section 10.

(*e*) The criminal and civil codes of the District are collected into a book known as "Carter's Alaskan Code." The citations in this edition show

that these codes are largely made up from the Codes of Ohio, Iowa, and Oregon. These laws regulate practice in the courts, marriage, divorces, wills, conveyances, estates, descent, escheats, promissory notes, eminent domain, incorporations, interest and usury, mechanics' liens, partnership, insurance, etc. In fact, these codes apply to and regulate life and business to the conditions prevailing in the District of Alaska just as completely as do the Codes of New York apply to and regulate life and business in that State.

(*d*) More than that, section 366, on page 552, requires every officer in the District, for whom a special oath is not provided by law, to swear that he will defend and support the Constitution of the United States.

(*e*) Section 367 provides that "so much of the common law as is applicable and not inconsistent with the Constitution of the United States, or with any law passed or to be passed by the Congress, is adopted and declared to be law within the District of Alaska."

The Revised Statues.

Section 1891, Revised Statutes, is as follows:

> "The Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within all the organized Territories, and in every Territory herein organized, as elsewhere within the United States."

We submit that the treaty and the laws heretofore cited bring the District of Alaska within the purview of the section just quoted. No matter what its name, it is now an "organized Territory."

The Sections Complained of.

The sections whose constitutionality is assailed in the bill are 460, 461, and 463 of the Criminal Code of Alaska, which is the act of March 3, 1899, to be found on pages 1336, 1337, 30 Statutes.

For the reasons heretofore stated, we respectfully submit that the Constitution of the United States is now, and at the time of the grievances complained of in the bill was, in force and effect in the District of Alaska, and that the sections of the criminal code last cited are in contravention of the Constitution, and are therefore null and void.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Mar 21, 1902.

A. W. CORBUS, *Appellant*, *vs.* THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 53.
CHARLES STEWART, *Appellant*, *vs.* THE WASHINGTON AND ALASKA SEAMSHIP COMPANY *et al.*	No. 71.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, *vs.* THE UNITED STATES.	No. 139.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, *vs.* TTE UNITED STATES.	Nos. 155, 156, and 157.

Appeals from the United States District Court for the District of Alaska.

Brief for Appellants in Nos. 71, 139, 155, 156, and 157.

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Brief for Appellants in Nos. 71, 139, 155, 156, and 157.

STATEMENT.

On motion of the appellants in Nos. 71, 139, 155, 156, and 157, this Court advanced said causes under paragraph 8, rule 9, and set them down for hearing with cause numbered 53 on the docket for the October Term, 1901, the principal question in each case being the constitutionality of sections 460 and 461, of chapter 44, of the Act of Congress of March 3, 1899, entitled "An act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said District."

In the case of A. W. Corbus *vs.* The Alaska Treadwell Gold Mining Company, No. 53, Corbus, a stockholder in said company, filed a bill in equity asking that the officers of the company be enjoined from paying a license tax of $3 per stamp upon the stamp mill owned and operated by said company, and asking that the sum of $1,875 paid into the court be held to await the final determination of the question of the constitutionality of sections 460 and 461 of the Act of March 3, 1899, which sections, it was claimed, are unconstitutional and void. A temporary restraining order was granted, but upon final hearing the demurrer of the appellee company was sustained. Final decree was entered and appeal taken.

The appellant Corbus appears by other counsel.

The Record shows that in case No. 71, Charles Stewart *vs.* The Alaska Steamship Company and Frederick Dodwell, treasurer, and H. C. Wallace, president, of said company, the appellant, a stockholder in said company, on the 7th day of Novem-

ber, 1899, filed in the office of the clerk of said court a bill in equity asking that the defendants be enjoined from paying out or applying the sum of $767 or any money of said company for license tax under the provisions of said section 460, of chapter 44, of the Act of Congress of March 3, 1899, for and on behalf of the steamship "City of Seattle," which he, said appellant, had forbidden, but which he alleged the said officers were determined to and would do unless restrained.

The appellant offered to and did deposit with the clerk of said court the said sum of $767, the amount claimed as such tax, which he asked might be held by the court to abide the decision of this Court upon the question of the constitutionality of said Act of Congress. (Record, pp. 1 to 7.)

Afterwards, on said 7th day of November, 1899, said court granted a restraining order restraining defendants from paying said license tax, and directing that they be permitted to pay the sum into the registry of the court pending the hearing and final determination of the rights of the parties, and that license issue the same as if it had been paid upon the application of the company, and also directed that a copy be served on the United States district attorney for Alaska and that he be given leave to appear in behalf of the United States. (Record, pp. 7 and 8.)

A demurrer to the bill was filed by the defendants for want of equity therein.

Afterwards, to wit, on the 30th day of December, 1899, the said cause coming on for final hearing, the United States district attorney asked and

obtained leave of the court to appear as *amicus curiæ*, and in that capacity and disclaiming any intention to in any manner represent or bind the United States, denied that the court had any jurisdiction under any of the forms of action presented to hear and determine the cases upon their merits. He denied the right or power of the court to enjoin the defendants in any case from paying the license in question, arguing in support of the constitutionality of the law, and filed a brief in support of both contentions. Whereupon the demurrer of the defendants was sustained by the court. (Record, pp. 9 to 16.)

Afterwards, on January 2, 1900, the court entered a decree directing the issuing of license and the payment into the Treasury of the United States of the money deposited in court. (Record, pp. 16 and 17.)

Appeal was prayed from such decree to this court, bond duly filed, bill of exceptions allowed, and appeal granted.

In the case of The Pacific Steam Whaling Company *vs.* The United States, No. 139, a petition was filed in the court setting forth the fact that the company owned and operated the steamships "Walcott," "Excelsior," "Newport," and "Golden Gate," American vessels registered at the home port of San Francisco, Cal., which were engaged in carrying freight and passengers between the different ports in Alaska, and no other, protesting against the payment of any additional license tax under the said Act of March 3, 1899, on account of said steamships; but because of the severe penalties

provided by the said act, and in order to avoid prosecution thereunder, asked the action of the court in the premises. The company also deposited in court, under protest, the sum of $779.80, being $1 per ton on the net tonnage of said vessels, which it asked might be held pending the determination of the questions involved.

It was also represented that the company carried on the business of salmon canneries at Hunter's Bay, Orca, Kenai, Uyak Bay, Chignik, and Nashag-ak, in said District of Alaska. It protested against the payment of any part of the 4 cents per case of salmon canned by it, as required by said section 460 of the Act of March 3, 1899, but offered to and did pay into court the amount required, the same to be held until the final determination of the matter.

Whereupon the court ordered that the company be permitted to carry on its several kinds of business and that the clerk hold the money paid into court by it, viz., $779.88 on account of said steamships and the sum of $3,922.56 on account of said salmon canneries, which sum it was directed be held until the determination of the matters set forth in the petition.

On the 30th day of December, 1899, the court overruled and denied said protest, holding the company liable to pay the said license tax and directing that the money paid into the court by the company be covered into the Treasury of the United States.

January 2, 1900, final decree was entered in said

cause, to which exception was made by the petitioner and allowed by the court.

Appeal was prayed and granted, bill of exceptions allowed, bond filed, and the record transmitted to this Court.

In cases Nos. 155, 156, and 157, the Pacific Coast Steamship Company *vs.* The United States, petitions and protests were filed similar to those in No. 139; that in No. 155 being on account of the steamship "Orizaba," in which case the license tax exacted was $742.69; in case numbered 156, on account of the steamship "City of Topeka," the tax for which was $746.62, and in case numbered 157, on account of the steamship "Queen," the tax for which was $1,672.15.

These vessels, it was alleged, were employed by the company in the transportation of freight and passengers from the port of Seattle and other ports on Puget Sound and the port of Victoria, B. C., to ports in Alaska. The chief and almost entire business transacted by them being through business in freight and passengers between said ports on Puget Sound and British Columbia on the one part and ports in Alaska on the other. And, incidentally, they did a local business in the District of Alaska, and some of them, particularly the "Queen," are operated at times as excursion steamers between Puget Sound ports and those in southeastern Alaska; that the local business done by said steamers while plying in Alaskan waters is very small.

It was insisted that no license was necessary, under said Act of Congress, for either of these vessels so used, but that to avoid the extremely stringent penalties of the said Act, the company makes its protest and prays the action of the court in the premises.

It is also stated that said steamships are duly enrolled, assessed, and taxed to their owners at the port of San Francisco, and are therefore not subject to the payment of additional license tax within the District of Alaska. And that if it be held they are so subject, under said Act of Congress, then the same is unconstitutional. (Record, pp. 1 to 4.)

The said several above-mentioned sums were paid into court under protest, to avoid the penalties of the law, and on the 6th day of July, 1899, the court directed that license issue to said steamships and that the money so paid be held until the final order and trial of the matters set forth in the petition and protest.

Afterwards, on the 30th day of December, 1899, the court ignored and rejected said protest and directed that license be issued to said steamships and that the money deposited be paid into the United States Treasury.

On January 2, 1900, final decree was rendered, overruling, denying, and ignoring each of said protests, and holding said steamships liable to said license tax and covering the money deposited therefor into the United States Treasury. (Record, pp. 5 to 13.)

Appeal to this court was prayed and granted, bill of exceptions allowed, bond filed, and the record duly certified.

Assignment of Errors.

(1) The court erred in holding the injunction prayed for by appellants would not lie.

(2) In holding the parties in these cases had a plain and adequate remedy at law.

(3) In holding that the parties were not entitled to equitable relief on the ground that a multiplicity of suits was threatened and that they were about to sustain irreparable injury.

(4) In holding that the court could not acquire jurisdiction to pass upon the constitutionality of the Act of March 3, 1899, upon the protests filed.

(5) In not holding that the said Act violates the provisions of the Constitution of the United States and is, for that reason, null and void.

(6) In not granting the injunction and sustaining the protests of the said appellants.

(7) In rendering final judgment and entering final decree against appellants in said proceedings.

(8) In not holding the monies deposited in court until the final determination by this court of the questions involved.

In case numbered 139, Charles Stewart *vs.* The Washington and Alaska Steamship Company *et al.*, the appellant assigns the following separate and additional errors:

(9) The court erred in sustaining the demurrer filed by the defendants to appellant's bill praying for an injunction.

(10) In entering final decree against appellant on said demurrer.

(11) In not holding that as said steamship was duly enrolled and licensed in the State of Washington, the said Act of March 3, 1899, did not apply to her.

In cases numbered 155, 156, and 157 The Pacific Coast Steamship Company *vs.* The United States, the said appellant assigns the following separate and additional errors:

(12) The court erred in holding that the said steamships of appellant, which were duly enrolled, licensed, and taxed at the home port of San Francisco, Cal., and engaged in the coastwise trade, their principal business being through business between Puget Sound and British Columbia ports and the ports of Alaska, and merely incidentally doing a local business, are, under the Act of March 3, 1899, subject to the additional license tax prescribed therein.

(13) In not holding said steamships are not "plying in Alaskan waters" within the meaning of said Act of March 3, 1899, and therefore do not come within its provisions.

Argument.

The first question presented by the Record for consideration by the court is that of the sufficiency of the bills filed by appellants to enjoin the payment of the license required by the Act of March 3, 1899, as a prerequisite to the carrying on of the business in which they were engaged.

The court sustained demurrers to these bills and in the opinion given stated, in effect, that injunction by one stockholder against a corporation to restrain the latter from applying for a license and paying the tax imposed by a law of Congress for conducting a business, would not lie.

(2) That equity would not interfere because the parties had a plain legal remedy.

(3) The facts are not so pleaded as to enable the court to "reasonably infer" that the allegation as to the threatening of a multiplicity of suits is true.

We will consider these objections in their order, and, *first*, as to the right of a stockholder to prevent, by injunction, the wasting of the funds of the corporation by the payment by the officers of the company of an illegal tax.

The court concedes that this Court held in the case of Pollock *vs.* Farmers' Loan and Trust Company (157 U. S., 429), on review (158 U. S., 601), that a stockholder in that company could invoke the aid of a court of equity to enjoin the company

from paying the income tax. But he attempts to draw a distinction between that case and those at bar.

The difference between the cases, he states, is, that the trust company had from time to time taken and executed and was holding and executing numerous trusts, and that voluntary compliance with the income tax provisions would expose the company to a multiplicity of suits, while in the cases at bar the appellants are corporations formed for the simple purpose of operating steamers in Alaskan waters, and that it is not claimed any trusts have been committed to the defendants, their only obligation being to their stockholders.

We are unable to perceive the difference in principle, between the two classes of cases, contended for by the court.

If the officers of the steamship companies, whom it is sought to enjoin, hold the funds in their hands belonging to the company as *trustees for the stockholders*, we cannot see that their obligations would be any less than if they held trust funds of other persons, having no interest in the companies.

That they do hold such funds *in trust* will hardly be disputed. That the officers of a corporation occupy a fiduciary position towards both the stockholders and creditors of the corporation is well settled.

Drury *vs.* Cross, 74 U. S. (7 Wall.), 302; R. R. Co. *vs.* Howard, 74 U. S. (7 Wall.), 392.

In the well-considered case of Dodge *vs.* Woolsey, 59 U. S. (18 How.), 331, which was a suit in chancery brought by Woolsey in the circuit court of the

United States for the district of Ohio, against the tax collector, the directors of the branch bank itself, seeking to enjoin the collection of a tax assessed by the State of Ohio on the bank, on the ground that it violated the Constitution of the United States. Mr. Justice Wayne, speaking for the court, after stating there had been some conflict in the decisions, said:

> "It is now no longer doubted, either in England or the United States that courts of equity in both have jurisdiction over corporations, at the instance of one or more of their members, to apply preventive remedies by injunction, to restrain those who administer them from doing acts which would amount to a violation of charters, or to prevent any misapplication of their capitals or profits, which might result in lessening the dividends of stockholders, or the value of their shares, as either may be protected by the franchises of a corporation, if the acts intended to be done create what is in the law denominated a breach of trust. And the jurisdiction extends to inquire into and enjoin, as the case may require that to be done, any proceedings by individuals, in whatever character they may profess to act, if the subject of complaint is an imputed violation of a corporate franchise, or the denial of a right growing out of it, for which there is not an adequate remedy at law."

Cunliffe *vs.* Manchester & Bolton Canal Company, 1 Russ. & Mylne, ch. 131 n.; Ware *vs.* Grand Junction Water Co., 1 Russ. & Mylne, 136; Bagshaw *vs.* Eastern Counties Railway Co., 7 Hare, ch. 144; Angell & Ames, 4th ed., 424, and the other cases there cited.

In this case there were none of the elements which the trial court held distinguished the case of Pollock *vs.* The Farmers' Loan and Trust Co., *supra*, from the cases at bar. It was a case precisely in point, being a bill by a stockholder of a bank to enjoin the officers of the bank from paying an illegal tax, and did not involve any trust undertaken by the bank for outside parties. (See also High on Injunctions, 3d ed., secs. 1203 and 1225.)

The second point made by the court against the bills of appellants is that they have a plain remedy at law by resisting the enforcement of the statute in question.

There is no doubt the officers of these corporations could have resisted the enforcement of the law. But it is charged in the bills they refused to do this, and unless restrained they would pay the license in question. It cannot be contended, therefore, that the appellants had a plain legal remedy. They were driven to take the only course by which their rights and those of the other stockholders could be protected.

It is not strange, however, that these officers were not willing to voluntarily resist the enforcement of this law. It is a criminal statute, bristling all over with pains and penalties. Section 461 provides penalties for its violation as follows:

> "For the first offence a sum equal to the license; and for a second offence a sum equal to double the amount of the license; and for the third offence three times the license required and imprisonment for not less than thirty days nor more than six months: *Provided*, That

each day business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offence."

Leaving out of view the matter of imprisonment, let us see the cost to these appellants of resisting this criminal statute:

The liability to fines by the Pacific Coast Steamship Company, for instance, would have been for the first day, $3,160.46; for the second day, $6,320.92; and for the third day, $9,481.38, or an aggregate of $18,962.76. And then a fine of $3,160.46 for each additional day they engaged in business, to be increased as above.

The very remarkable suggestion made by the court that under the law he had the power to somewhat mitigate the rigors of this terribly severe statute, and that it was well known to every attorney appearing in these cases that he had frequently exercised that power is without force, if for no other reason, because, even if they could have relied upon his leniency, no assurance could be given that he would occupy his position as such judge a single additional day.

After the third offense, as we have seen, the statute makes imprisonment a part of the penalty, and the court would have had no power to omit it entirely. And, as the business of the appellants is carried on constantly, a new offense would have been committed each day.

The language used by the court in the great case of Osborn *vs.* Bank of the United States, 22 U. S. (9 Wheat.), 738, speaking through Chief Justice

Marshall, that the "execution (of the statute) would violate and destroy the rights and privileges of the complainant," is applicable to the cases at bar.

But to exclude the jurisdiction of a court of equity the parties must have not only a "plain" remedy at law, but it must be adequate and complete as well.

As to the meaning of this language of the Act of 1789, this Court, in Boyce's Executors *vs.* Grundy (3 Pet., 210), said that the remedy at law must be "as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity."

If it be less than this, then equity jurisdiction is not by this rule excluded from taking cognizance of the case. Watson *vs.* Sutherland, 5 Wall., 74; Morgan *vs.* Beloit, 7 Wall., 613; High on Injunction, 3d ed., sec. 496, and authorities cited.

The remedy at law suggested by the court in these cases certainly would not have been as plain, practical, or efficient to the ends of justice, as that pursued by the appellants, and we insist, therefore, that the objection to the jurisdiction on this ground cannot be sustained.

The third objection made by the court was that the facts are not sufficiently stated to enable the court to "reasonably infer" that the allegations as to a multiplicity of suits are true.

We hardly think this is a matter open to the inference of the court, but are of opinion that he must take the facts as stated and sworn to as true. Can the court disregard the statement of facts in

the bills, and as he contends, base his decision as to whether they exist upon such "reasonable inferences" as he may draw from them? It seems to us the mere statement of the position of the court is sufficient to show it is not tenable.

In the case of Dodge *vs.* Woolsey, *supra*, it was claimed in argument that the suit had been improperly brought in the circuit court of the United States, because it was a contrivance by Woolsey, or between him and the directors of the bank, to give the court jurisdiction on account of their residence and citizenship being in different States. In answer to this the court said:

> "We first remark as to the imputation of contrivance that it is the assertion of a fact which does not appear in the case; one which the defendants should have proved if they meant to rely upon it to abate or defeat the complainant's suit, and that, not having done so, as they might have attempted to do, we cannot presume its existence."

So we might say in the case at bar. The complainants stated the fact to be that a multiplicity of suits would result from the refusal of the court to grant the injunctions prayed for. This is clearly the statement of a fact, and would seem to be sufficient.

The Act of March 3, 1899.

Assuming that we have shown the court had jurisdiction to grant the injunctions prayed for, and that the facts stated were sufficient, we now

proceed to a discussion of the constitutionality of such act.

The appellants contend that said sections 460 and 461 of said act violates the provisions of the Constitution of the United States, particulary section 8, of article I, and section 9, of article I, of the said Constitution.

Section 8, of article I, provides that—

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Section 9, of article I, provides that—

> "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another."

It will hardly be denied that the sections of the Act of March 3, 1899, in controversy, violate these provisions of the Constitution.

The tax exacted from the owners of these steamships and other classes of business is not "uniform throughout the United States." In point of fact they do not exist in their unusual, if not unreasonable, excessiveness at any other place in the United States, its Territories, or dependencies, so far as we are informed.

And as to the steamships which are owned, licensed, and taxed at their home ports in the

United States, the tax is certainly a discrimination against them by requiring the vessels bound from one State to another to pay duties—that is, if Alaska can be considered a State, or is included in the expression "throughout the United States," as they are used in the sections of the Constitution quoted.

This brings us to the discussion of the meaning of these provisions of the Constitution.

Since the recent decisions of this Court in the De Lima and Downes cases, we are no longer left in doubt as to the meaning of these provisions. It seems to be settled by these decisions that territory acquired by treaty, as Alaska was, becomes territory of the United States immediately upon the ratification of the treaty, but that such territory does not become a "State," or subject to the provision requiring taxation to be uniform "throughout the United States," until Congress extends the Constitution with these provisions to such territory. The inquiry arises, therefore, in these cases what Congress has done to extend the Constitution of the United States to Alaska.

The Treaty.

The treaty with Russia for Alaska was proclaimed by the United States June 20, 1867 (15 Stats., pp. 539 to 544).

Article III, on page 542, is as follows:

> "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer

> to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion."

These guarantees of civil and religious liberty and protection to property are in precisely the same language as they are found in the Constitution of the United States.

The first action of Congress in reference to this acquired territory is the Act of July 27, 1868, now sections 1954 to 1976, Revised Statutes. The first section of this act, now section 1954, is as follows:

> "The laws of the United States relating to customs, commerce, and navigation are extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Then follows provisions restricting the importation of fire-arms and distilled spirits, prohibiting the killing of fur-bearing animals and giving jurisdiction in what is denominated by the act "the territory of Alaska and the waters thereof," to the district courts of the United States in California or Oregon or the district courts of Washington.

Provision was also made for reserving certain islands for Government purposes, and for making leases for the killing of seals.

Section 4140 Revised Statutes, which was originally a part of the same act, provides for nationalizing vessels owned by actual residents of Alaska, June 20, 1867. (The date of the treaty.)

The Act of May 17, 1884.

By this act Congress provided that said territory should constitute a civil and judicial district, making provision for its government, by the appointment of a governor, defining his powers and prescribing his duties; establishing a district court and fixing its jurisdiction, also for the appointment of a clerk, a district attorney, and a marshal.

Authority was given the President to appoint four commissioners who should have the powers of justice of the peace in Oregon, the laws of which state were declared to be the law of the district. Writs of error to the district court from the United States circuit court for the district of Oregon were provided for and appeals allowed to said court. The office of surveyor general of said district was also created, his duties prescribed, and the mineral land laws of the United States extended to said Territory and the rights of persons then in possession of land other than mineral land guaranteed, and provision for obtaining title by future legislation promised.

This act created an organized government for the district of Alaska. This Court has held that the *court* created by said act should be considered as the "Supreme Court of a Territory" within the meaning of the Act of March 3 1891. Coquitlam *vs.* The United States, 163 U. S., 346.

It must be apparent also that the application to the territory composing this district, by said act, of the laws of the State of Oregon, which laws were enacted under and are subject to the Constitution of the United States, extended the Constitution to Alaska just as effectively as if it had been done by direct enactment.

Since the Act of 1884, Congress, by the Act of 1891, extended the townsite laws to the District and provided for the purchase of trade and manufacturing sites by persons engaged in trade or manufacturing within said Territory.

By the Act of May 14, 1898, the homestead laws were extended, as were also the act providing for acquiring the right of way by railroad companies over the public lands, the bankruptcy law, and the public land surveys.

The next in order of date is the Act of March 3, 1899, providing a complete criminal code for Alaska, sections 460 and 461 of which are in controversy in these cases. We have already discussed these provisions of the code.

By Act of June 6, 1900, a complete civil code was also provided. This act provides for the appointment of a governor, judges, district attorneys, a surveyor general, and a marshal by the President, by and with the advice and consent of the Senate, and fixes their tenure.

An oath to support the Constitution of the United States is also provided for the officers of the District.

It will be observed also that section 1891 Revised

Statutes extends all general laws of the United States to all the "organized territories."

In the Porto Rican cases it was clear Congress had done nothing looking to the extension of the revenue provision of the Constitution, or of the revenue laws, to that Territory, but, on the contrary, all its action indicated a different purpose.

In contrast with this action we have Congress by its first act (July 27, 1868) extending to Alaska "the laws of the United States relating to customs, commerce, and navigation." The same act provides for the nationalizing of the vessels owned at the date of the treaty by actual residents of the Territory. Here, then, we have an extension of all the laws of the United States enacted as they were in accordance with the Constitution, which affect the cases in controversy, without any exception whatever. It is also seen that when Congress extended the mineral laws, the homestead and the bankruptcy law to Alaska, the purpose to make the laws governing that Territory uniform with the laws throughout the United States, is clearly apparent.

We can hardly conceive that it was the purpose of Congress to subject these hardy pioneers of this rigorous northland to pains and penalities and burdensome taxes not born by the people in the other more favored localities. If these taxes were to be expended locally to build up a school system and to supply other crying needs of this new and sparsely settled community, as was contended in behalf of the special legislation for Porto Rico, there might be some reason to presume Con-

gress had this end in view, but, in point of fact, it is not to be so expended, but is covered into the overflowing Treasury of the United States to lighten the burdens of other more favored peoples.

It is estimated that this extraordinary tax amounts to *more than forty dollars per capita*, in addition to the ordinary taxes of the National Government.

Under these circumstances it would seem that the rule that revenue laws should be strictly construed in favor of the tax-payer should be closely adhered to in these cases, and that if the act will bear any other construction than that contended for by the lower court, it should be given by this Court.

Leaving out the infinitesimal number of the natives, Alaska is now inhabited almost wholly by citizens of the States and other Territories. Hence, there was never any such reason for withholding from them all the protection of the Constitution which it is claimed exists as to Porto Rico and other possessions.

It would seem, therefore, that these various acts of Congress fully supply whatever may be required under the decisions in the De Lima and Downes cases, *supra*, to extend the Constitution to Alaska, and that the validity of any act of Congress applying to said Territory must be tested by that instrument.

Being so tested, sections 460 and 461 are clearly violative of its provisions and are nugatory.

Sections 460 and 461 of the Criminal Code Not Applicable.

If we are correct in our contention that the Constitution has been extended to Alaska by Congress, within the meaning of the decisions of this Court, and if we are also correct in our view that sections 460 and 461 are not in harmony with that instrument, it follows that the license tax exacted of the appellants in these cases was illegally exacted and required, and the decision of the district court of the United States for the District of Alaska must be reversed as to all of the cases involved.

But aside from the question of the constitutionality of said sections, we insist that they are not applicable to the case of the appellants, Charles Stewart, No. 139, nor to the cases of the Pacific Coast Steamship Company, Nos. 155, 156, and 157.

In these cases it is shown that the principal business of these vessels was that of a through passenger and freight business between the ports of Puget Sound and British Columbia on the one hand and Southern Alaska on the other, and that they did incidentally only a very small amount of local business, less, perhaps, than the amount of the tax, between Alaskan ports; that they were licensed, owned, and taxed at their home ports in the States of Washington and California. It is insisted, therefore, that these vessels were not "plying in Alaskan waters," within the meaning of said section, and were, therefore, not required to take out additional license and pay additional tax for the transaction of their said business.

It is to be presumed in the discussion of this act that Congress had in mind the uniform spirit in which taxation has been exercised by the United States, namely, that vessels should be taxed only once, for from the statutes themselves and from the decisions of the United States Supreme Court it has been uniformly held that a vessel enrolled, licensed, and registered under the United States navigation laws does not by engaging in business within a State become subject to its taxing power, if the owner is a non-resident.

Hayes *vs.* Steamship Co., 17 How., 596.
St. Louis *vs.* Ferry Co., 11 Wall., 423.
Morgan *vs.* Parham, 16 Wall., 471.
Gloucester Ferry Co. *vs.* Penn., 114 U. S., 196.
Pullman Car Co. *vs.*, Penn., 141 U. S., 32.

Section 2793 of the Revised Statutes is as follows:

"Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees *or tonnage tax*, as if from or to foreign ports, but such a vessel shall notwithstanding be required to enter and clear."

Section 4220 Id.:

"No vessel belonging to any citizen of the United States, trading from one port within the United States to another port within the

> United States, or employed in the bank, whale, or other fisheries, shall be subject to tonnage tax or duty if such vessel be licensed, registered, or enrolled."

It must be presumed that all subsequent legislation on this subject was made in the light of prior legislation, and that Congress did not intend to repeal by implication either the letter or spirit of these two sections, which clearly lay down the rule that a tonnage tax is looked upon with disfavor, and if by any reasonable construction of the act in question it can be made to keep within the spirit of Congress and the spirit of the decisions of this Court, that construction should be followed, which is, the act should be so construed as to make it apply only to vessels doing an *exclusively local business* within the District of Alaska.

This act was evidently designed to require property which had heretofore paid no tax to contribute under the act in question to the General Government of the United States, so as to reimburse it to some extent for the expenses which it incurs within the District of Alaska, and not to levy a tax upon property which was taxed elsewhere in the United States, nor upon vessels which incidentally do a local business within the District, for if this had been the intention of Congress, they would have provided that ocean and coastwise vessels doing a local business for hire in Alaskan waters should be taxed $1 per ton on net tonnage, custom-house measurement of each vessel, and would have omitted the words "plying in Alaskan waters."

But it may be argued that a license is distinguished from a tax, and that the sections referring to the new revenue laws are inapplicable. The term "revenue law," when used in connection with the jurisdiction of the courts of the United States, means a law imposing duties on imports or tonnage, or a law providing in terms for revenue—that is to say, a law which is directly traceable to the power granted to Congress by section 8, of article I, of the Constitution, "To lay and collect taxes, duties, imposts, and excises." (U. S. *vs.* Hill, 123 U. S., 685.) But it is settled in the License Cases. (5 Wall., 471.)

That the granting of a license must be regarded as nothing more than a mere form of *imposing a tax*, and as implying nothing except that a licensee shall be subject to no penalty under the national law if he pays it, and all prohibitions under penalties against carrying on a business without a license are only a mode of enforcing the payment of such taxes.

The rule for the construction of statutes levying taxes or duties on a citizen is laid down very clearly in Rice *et al. vs.* U. S., 53 Fed., 912, where it is said:

> "The rule for the construction of statutes levying taxes or duties on the citizen is laid down by Lord Cairns, in delivering the judgment of the House of Lords (Partington *vs.* Attorney General, L. R., 4 H. L., 100, 122), in this language: 'As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of

the law, he must be taxed, however great th
hardship may appear to the judicial mind t
be. On the other hand, if the Crown, seekin
to recover the tax, cannot bring the subjec
within the letter of the law, the subject is fre
however apparently within the spirit of th
law the case might otherwise appear to be. I
other words, if there be admissible in any statut
what is called an 'equitable construction,' ce
tainly such construction is not admissible in
taxing statute, where you can simply adhere t
the words of the statute.' Judge Story says
'It is a general rule in the interpretation of al
statutes levying taxes or duties upon subject
or citizens, not to extend their provisions b
implication beyond the clear import of th
language used, or to enlarge their operation
so as to embrace matters not specifically
pointed out, although standing upon a clos
analogy. In every case, therefore, of doubt
such statutes are construed most strongly
against the Government and in favor of th
subjects or citizens, because burdens are no
to be imposed nor presumed to be imposed
beyond what the statutes expressly and clearly
import. Revenue statutes are in no just sense
either remedial laws or laws founded upon any
permanent public policy, and, therefore, are
not to be liberally construed.' (U. S. *vs*
Wiggleworth, 2 Story, 369.) And this is the
uniform doctrine of the authorities. (American
Net & Twine Co. *vs*. Worthington, 141 U. S.
474; U. S. *vs*. Isham, 17 Wall., 496; Hartranft
vs. Wiegmann, 121 U. S., 609; Powers *vs*.
Barney, 5 Blatch., 202; Dean *vs*, Charlton, 27
Wis., 526; Sutherland Statutory Construction,
461, 462; Cooley Taxation, 2d ed., 266.")

We think we have already shown, from the discussion of the act in question, that it was not intended to impose the license tax provided in the act upon vessels duly licensed in the coastwise trade, and it cannot be denied that the vessels of the Pacific Coast Steamship Company and the Washington and Alaska Steamship Company are so licensed.

These companies are operating a number of vessels on the Alaska route, and may from time to time be required to substitute other vessels in place of those licensed under the act. The total revenue derived from local business would not be equal to the amount of the prescribed tax, if paid. Therefore, considering the very large rate of the tax, and the fact that it was computed on the *total tonnage* of the vessel, it does not seem possible that it was intended by the statute that it should be applicable to vessels whose main business was not local trade, but that it was intended to be applicable to vessels exclusively engaged in local trade. The local trade of the vessels of The Pacific Coast Company, and The Washington and Alaska Company in Alaska is merely incidental to their through business. The rate of tonnage tax imposed by this statute is remarkably large. The tonnage tax imposed by the Revised Statutes upon vessels of the United States engaged in foreign trade is only thirty cents per ton, payable but once in a year, and the only tonnage dues on the foreign trade that amount to one dollar a ton are on foreign vessels from foreign ports here. United States vessels are not usually allowed to trade. (See Rev. Stats.,

secs. 4219, 4223.) The rates or dues fixed by thes
sections have been substantially reduced by th
Act of June 19, 1886, chapter 421, section 11.

If the license fee is applicable to vessels tradi
from points outside of Alaska, it is contrary to th
general plan and spirit of congressional legislatio
with regard to the coasting trade. The legislatio
relating to this trade has always attempted t
permit such trade for the benefit of America
vessels, foreign vessels being excluded from suc
trade, and American vessels engaging in it no
being subject to tonnage dues.

The vessels of these companies have their hom
ports in the United States outside of the limits o
Alaska. They are enrolled at these other ports
and may, under the provisions of the genenra
legislation of Congress on the subject, obtain yearl
licenses for the coasting trade, and as they hav
procured such licenses, they will upon the expira
tion of the same be entitled under the provisions o
that legislation to obtain further licenses for th
same purpose. These licenses expressly authoriz
them to engage in the coasting trade between an
points of the United States. That such a licens
is an express authority from the United States t
engage in such a trade, was settled in the earl
and important case of Gibbons *vs.* Ogden,
Wheaton, 1, in which, at pages 212, 215, Chie
Justice Marshall says:

> "It seems very clear that the whole act o
> the subject of the coasting trade, accordin
> to those principles which govern the construc
> tion of statutes, implies unequivocably a

authority to license vessels to carry on the coasting trade. * * * The fourth section directs the proper officer to grant to a vessel qualified to receive it a license for carrying on a coasting trade, and prescribes its form, after reciting the compliance of the applicant with the previous requisites of the law. The operative words of the instrument are: 'License is hereby granted for said steamboat "Bellona" to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.' These are not the words of the officer; they are the words of the legislature, and convey as explicitly the authority the act intended to give, and operate as effectually as if they had been inserted in any other part of the act than the license itself. * * * The license must be understood to be what it purports to be, a legislative authority to the steamboat "Bellona" to be employed in carrying on the coasting trade for one year from its date. It has been denied that these words authorize a voyage from New Jersey to New York. It is true that no ports are specified, but it is equally true that the words used are perfectly intelligible, and do convey such authority as unquestionably as if the ports had been mentioned. The coasting trade is a term well understood. The laws define it, and all know its meaning. * * * The object of the license, then, cannot be to ascertain the character of the vessel, but to do what it professes to do—that is, to give permission for a vessel already proved by her enrollment to be American to carry on the coasting trade."

And in Hermon *vs.* City of Chicago, 147 U
396, Mr. Justice Field says, at page 465:

> "In Gibbons *vs.* Ogden (9 Wh., 210),
> Court held that vessels enrolled and licer
> pursuant to the laws of the United States
> these tugs were, had conferred upon them
> full and complete authority to carry on
> trade as it was in the power of the court
> confer."

The present section of the Revised Statutes
peating the provision referred to in 9 Wh. is
tion 4321. That trade with Alaska is within
meaning of the term "coasting trade" is
clusively established by section 4358 of the
vised Statutes. Under this general legislati
then, these vessels hold licenses from the Uni
States at their home ports, giving them comp
authority to engage in the coasting trade in
port of the coasts of the United States, includ
Alaska, and on the expiration of any such lice
they will be again entitled at their home port
obtain new licenses to the same effect. The
visions of the local penal law of Alaska will
operate to prevent that right.

In the case of Huus *vs.* New York and P
Rico Steamship Company, decided by this Co
at the last term, the question involved was whet
a steamship duly enrolled and licensed for
coasting trade under the laws of the United Sta
engaged in trade between the ports of Porto R
and the port of New York, is a coastwise seago
vessel within the meaning of the Revised Statu

section 4401, and whether when under control of a pilot licensed under the Federal statutes, is exempt under section 4444 from the provisions of State pilotage laws. Both questions were decided in the affirmative.

It was held that the Foraker Act having provided for nationalizing Porto Rican vessels, also provided that "the coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States." That in accordance with such provisions the executive officers of the Government issued an enrollment and license to the "Ponce," to be employed in carrying on the coasting trade, instead of treating her as a vessel engaged in foreign trade.

It is then said:

> "That the words 'coasting trade' are not intended to be strictly limited to trade between adjoining districts is also evident from Revised Statutes, 4358, wherein it is enacted that 'the coasting trade between the territory ceded to the United States by the Emperor of Russia, and any other portion of the United States, shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.'"

It is also pointed out that a similar provision was adopted in the act to provide a government for the Territory of Hawaii (31 Stat., 141, sec. 98).

If, then, because the "Ponce" was "a vessel duly enrolled and licensed to carry on the coasting

trade," she was exempt from the State pilotage laws, why should not appellant's vessels, which have been similarly enrolled and licensed, and which are likewise engaged in the coasting trade, be exempt from the necessity of obtaining an additional local license and the payment of an additional tax when they do business between California and Washington ports and the ports of Alaska? It would seem the same rule should apply to them.

In any interpretation of the statute in question, it must be remembered that it is a penal statute, subject to the elementary rule of construction that all penal statutes must be most strictly construed and extended to make criminal only those things which are necessarily included by them. This provision is a part of the penal criminal code of the District of Alaska. If we turn to the exact phraseology and form of the statutory provision in question to ascertain whether it necessarily applies to such incidental local business as is done by these companies and others whose business consists substantially of through shipping, we notice in the first place that while in the final form which section 460 has taken, by reason of the scheme of arranging the items in alphabetical order, the one beginning "freight and passenger transportation lines," has become separated from the one particularly in point, beginning "ships and shipping." These two clauses are evidently to be taken in connection with one another.

If we place them together, they read:

> "Freight and passenger transportation lines propelled by mechanical power on inland waters, one dollar per ton per annum on net tonnage, custom-house measurement of each vessel."
>
> "*Ships and Shipping.*—Ocean and coastwise vessels doing local business for hire, plying in Alaskan waters, one dollar per ton per annum on net tonnage, custom-house measurement of each vessel."

This juxtaposition makes it evident that the words "ocean and coastwise vessels" are used in contradistinction to the words "lines on inland waters." In other words, the words "ocean and coastwise vessels" are used as descriptive of the place or owner of the business done in Alaska, and not as descriptive of the vessels or place from which they come. The terms "vessels from foreign ports" and "vessels engaged in the coasting trade," which are in Congressional legislation regularly used to designate those classes of vessels, are apparently purposely avoided here.

The words "plying in Alaskan waters" are of great significance, as indicating that only vessels whose business was confined to such waters were intended to be so taxed. If otherwise, the section would be quite as complete, definite, and clear without these words, for the whole of section 460 is, by the introductory clause, one applicable only to one prosecuting the business named within the District of Alaska.

No ship not landing in Alaska would in any case be within the reach of this clause. The words "plying in Alaskan waters" must, therefore, have been inserted with the idea that it in some way limited the class of vessels to which the act applied. The introductory clause, "prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska," and the clause in question, "doing local business," and "plying in Alaskan waters," are consistent in their apparent intention to limit the act in its operation to those vessels which are devoted to that local business. No other interpretation is consistent with the selection of the expressions used in the statute. The fact that the total tonnage of the vessel is selected as the basis upon which the license fee is to be computed shows conclusively that it should be applied only to those vessels whose total tonnage is engaged in the local business. It was certainly never intended by Congress that a vessel engaged in the coasting trade with a tonnage of fifteen hundred tons, for instance, only fifty of which were devoted to the local trade, should be compelled to pay a license tax on a tonnage of fifteen hundred tons. The interpretation which would make the act applicable to vessels engaged in business like that of The Pacific Coast and Washington and Alaska Companies would be prohibitive upon their local business, and injurious not only to their interests, but to the interests of the people who use their service and would be deprived of it. It is not, therefore, to be supposed for an instant that Congress intended to impose such a burden upon

the commerce of Alaska as would practically prohibit coasting vessels from doing a local business within its borders and greatly curtail the limited facilities which the people of this section already have in carrying on their commerce.

It is important to notice that all the business enumerated and required to be licensed under section 460, unless it be ships and shipping, are confessedly carried on within the District of Alaska, and said section speaks of any person or corporation prosecuting or attempting to prosecute any of the following *lines* of business *within the District of Alaska*, meaning by "lines of business" a business as a whole, and not an incidental touching at the ports within the District of Alaska and doing incidentally a local business. Having said in the same section that freight and transportation lines propelled by mechanical power on inland waters should pay one dollar per ton on the net tonnage, it also provided that ocean and coastwise vessels who established a line for local business within the District of Alaska should be subject to the tax, and not otherwise. Breweries under this act are taxed $500 per annum, and this unquestionably refers to a brewery located within the District of Alaska, and it might as logically be argued that a brewery located in the State of Washington, shipping five hundred kegs of beer within the District of Alaska, should be compelled to pay a license of $500 per annum for that privilege, as that a steamship engaged in the coastwise trade, which incidentally does a local business within the District of Alaska, should have its total tonnage subjected

to the tax therein provided. If it had been intended to tax ocean and coastwise vessels doing incidentally a local business in Alaskan waters one dollar a ton upon their total tonnage, different language would have been used.

Section 460 having provided that the tax should be levied in the nature of a license upon the doing of a line of business therein mentioned within the District of Alaska shows that the business must be carried on exclusively within that District. Within "means the limits or compass of, *not beyond*, not later than, in the inner part."

Vol. 29 Am. & Eng. Encyc. of Law, p. 521.

The Petitions of Appellants.

The only question remaining applies to the manner of presenting the questions involved to the lower court. We apprehend this Court will not be very technical in its consideration of the best method of presenting to the court authorized by the Act of 1899, to grant the license in question, the question of the constitutionality of sections 460 and 461; or the question whether if constitutional, they apply to vessels in the coastwise trade, which have been registered and taxed in their home ports in the States.

All parties were anxious to have these questions settled by this Court, and yet, being a penal statute, with unusually severe penalities attached for its violation, it would have been ruinous for them to have deliberately violated its provisions, even for the sole purpose of testing its validity or applicability. In that situation, some of the appel-

lants, filed petitions, in the nature of protests against being required to pay the license tax exacted, for both the above stated reasons, but, at the same time paid into court the amount of the license, and asked that the court determine these questions, and that the said sums so paid into court be held by it until the final determination of the matter.

In other cases, certain of the stockholders filed bills praying for injunctions against the officers of their corporations or companies, restraining them from paying out the trust funds in their hands for this illegal license tax.

The court overruled all of these bills, petitions, and protests, and refused to hold the monies so paid in, but ordered and directed that they be covered into the Treasury of the United States. It seems to us that either method was sufficient to present the questions to this Court on appeal.

A court of equity will not enjoin the payment of a tax unless the party seeking the injunction first pays or tenders the tax.

High on Injunction section 496.

It follows that these parties were required to pay into court, or tender the amount of the license tax, which they did.

In connection with this, they protested against the legality of the tax and asked for the judgment of the court, which was required to issue the license, as to their liability to pay the same. And, from his decision that they were so liable, these appeals are taken.

If the citizen who is burdened with this taxation cannot question its validity in some legal or equitable proceeding, then the law itself is unconstitutional, because it is depriving him of his property without due process of law. How, then, is this question to be determined if not in the proceeding now presented to the Court? It is impossible to enjoin the General Government from collecting this license tax, because there is no provision of law authorizing an injunction against the United States. It is likewise impossible to sue the Government of the United States in the district court for the District of Alaska to recover back the license tax paid under the provisions of this act, and no suit can be maintained in the Court of Claims against the Government upon any such claim, because no provision is made for the prosecution of any such claim before that court, hence it necessarily follows that this is the only way in which this question may be tested. As before remarked, it was certainly not the intention of Congress that one prosecuting a lawful business defined in the statute should submit himself to criminal process to test the legality of the act in question.

> "It is presumed that the legislature never intends to do injustice. If the statute is doubtful or ambiguous, or fairly open to more than one construction, that construction should be adopted which will avoid this result."
>
> Black on Interpretation of Statutes, p. 100.

> "Proceedings for the collection of the public revenue do not always require the intervention of a court or a jury, provided the property

owner is afforded an adequate opportunity to test the legality of the demand made upon his estate."

Black's Constitutional Law, p. 485, sec. 213.

The author, on page 486, says:

"But still it is not competent for the legislature to proceed to final and absolute divesture of title without affording the tax-payer an opportunity to be heard in opposition to it. 'Due process of law' requires that he shall have a chance to interpose objections to the validity of the tax, or to the contention that his land is liable for it, or to the manner of assessing it or collecting it at some stage of the proceedings before his property is irrevocably gone and before some authority competent to afford relief in case of invalidity or injustice."

Kelly *vs.* Pittsburgh, 104 U. S., 78.

Hagel *vs.* Reclamation Dist., 111 U. S., 701.

If it should be conceded that the court in this matter acts simply in a quasi-judicial capacity, such as boards of equalization, etc., yet in such a capacity the citizen is entitled to raise all the points with reference to the validity of the act under the authorities above cited, and if he were not allowed to do so, he is deprived of his property without due process of law, and the very fact that Congress has failed to point out how these questions may be tested, is the very strongest argument that they should be tested in the way such matters are tested by a court upon which the duties are placed. It is elementary that where duties are imposed upon a tribunal and no method is laid

down or prescribed as to how these duties shall
performed, they are to be performed according
the inherent powers of the tribunal; for ev
statute is understood to contain by implicati
if not by express words, all such provisions as m
be necessary to effectuate its object and purpose,
to make effective the rights, powers, privileges,
jurisdiction which it grants, and all such collate
and subsidiary consequences as may be fairly a
logically inferred from its terms.

In conclusion, we submit that, under the doctri
laid down by the Court in the De Lima and Dow
cases, the Constitutional provision as to uniformi
of taxation "throughout the United States" appl
to Alaska; that the various acts of Congress here
before pointed out prove conclusively that the C
stitution has been extended to Alaska and that t
validity of sections 460 and 461, of the Act of Ma
3, 1899, must be tested by the provisions of that
strument. That being so tested, they are clea
violative of its provisions for lack of uniformi
If such tax had been levied by Congress upon t
business of any one of the States, or the oth
organized territories, there could be no doubt as
what this Court would hold respecting its consti
tionality.

But, aside from this fatal objection to the decisi
of the court below, this act does not apply to t
business of the appellants, the Pacific Coast Stea
ship Company and the Washington and Alas
Steamship Company, the vessels of both of whi
companies having been enrolled and licensed
their home ports of California and Washington

engage in the coasting trade, and all of such vessels being engaged exclusively in such trade, within the meaning of the law, and as contradistinguished from vessels "plying in Alaskan waters," referred to in said Act of March 3, 1899, as the vessels liable to the license tax therein prescribed. That having been so enrolled, licensed, and taxed in their home ports, under the Federal Statute, to engage in the coasting trade, it was not the intention of Congress to require an additional license tax and the act does not bear the construction put upon it by the lower court.

We submit that said decision of the lower court should be in all things reversed.

S. M. Stockslager,
George C. Heard,
Attorneys for said Appellants.

John R. Winn,
John G. Heid,
Of Counsel.

[redacted]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

A. W. CORBUS, *Appellant*, *vs.* THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 53.
CHARLES STEWART, *Appellant*, *vs.* THE WASHINGTON AND ALASKA STEAMSHIP COMPANY *et al.*	No. 71.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, *vs.* THE UNITED STATES.	No. 139.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, *vs.* THE UNITED STATES.	Nos. 155, 156, and 157.

Appeals from the United States District Court for the District of Alaska.

Reply Brief for Appellants in Nos. 71, 139, 155, 156, and 157.

1.

In answer to the contentions of the United States that the license fees complained of are a part of a penal code for regulation and not a tax for revenue, and the power is therefore not derived from Article 1, section 8, but Article 4, section 3, of the Constitution, we beg to submit:

The annual license exacted in No. 53 is.....$1,875
The annual license exacted in No. 71 is..... 767
The annual license exacted in No. 139 is..... 4,702.36
And in Nos. 155, 156, and 157 (one Co.) ... 3,161.37

That where the license fee charged is in excess of the cost of issuing license and necessary regulation of the business, it is a tax.

Royall *vs.* Virginia, 116 U. S., 572.
Cooley on Const. Lim., sections 587, 495, and 201.
Cooley on Taxation, sections 532 and 592.

As to distinction between tax and license for regulation, see—

Dillon on Mun. Corp., 3d ed., sections 358, 359, and 768, and authorities cited.

As to the police power, see—

Cooley on Taxation, pp. 75, 605, 586, and 587.
Burroughs on Taxation, p. 509.

(2.) No regulation is provided for in the act and none was necessary as to many of the lines of busi-

ness required to be licensed, and the expense of issuing the license is paid by the applicant in addition to the fee.

II.

As to the contention that these license fees, if taxes, are local taxes intended to meet the expenses of governing the Territory, we submit:

1. There is nothing in the act to indicate any such purpose.

2. The legislation of the subsequent year appropriating a part of the license fees for school purposes, was passed after the fees were paid and the license issued in these cases and should have no bearing upon them.

3. That the license fees are to be paid to the clerk of the court which issues the license instead of to the collector of customs, we do not think supports the contention of the Government.

4. The fact remains, that they are paid *into the general Treasury of the United States*, and can be used for local purposes only, by subsequent appropriation by Congress.

5. The table submitted as an exhibit to counsel's brief, in order to show the cost of governing Alaska is more than the amount of revenue received, hardly tends to strengthen this case, as the charges for repairing United States revenue vessels, the expenses

of such vessels and cost of collecting customs, all of which were made in the collection of revenue for the general Treasury are charged to Alaska. But every cent of the cost of collecting the license fees and paying them into the Treasury, was borne by the applicants for licenses under the provisions of the act in question in these cases.

III.

(3.) As to the contention that the fees in these cases are not taxes in the proper sense of the word, but are the consideration which appellants, as foreign corporations, pay for the privilege of doing business in Alaska, we remark:

1. That the act by its terms applies to residents or citizens of Alaska as well as to persons or corporations residing or organized outside of that Territory, and we cannot see how such distinction as counsel claims can be made.

2. Are vessels owned by American citizens, enrolled, licensed, and taxed in one of the States, as "coast-wise vessels," or their owners, whether citizens or corporations of one of the States, foreign corporations when they seek to do business in Alaska; or do their licenses for the coast-wise trade protect them from any such charges under section 9, Article 1, of the Constitution, and sections 1954, 2793, 4220, and 4358, U. S. Revised Statutes? (See case of Huus *vs.* New York and Porto Rico Steamship Co., 182 U. S., 392, cited in original brief.)

3. If the fees are exacted for the reasons claimed, why should these vessels be charged $1.00 per ton, while other American vessels engaging in the *foreign trade* are required to pay only thirty cents per ton?

4. Again, attention is called to the fact that in the act of June 6, 1900, referred to by counsel, Congress, doubtless recognizing the unconstitunality and injustice of so much of section 460 of the act in controversy as it is claimed applied to the ocean and coast-wise vessels of appellants in Nos. 139, 155, 156, and 157, so amended it as to exclude from its provisions such vessels, when licensed or taxed elsewhere, as were the vessels of said appellants.

IV.

As to the jurisdiction of the United States District Court for the District of Alaska to grant the injunctions prayed for, we submit:

1. Both the bills in equity and the protests stated facts sufficient to bring the cases within the recognized grounds of equity cognizance. In addition to the unconstitutionality of the act in question, they all alleged that irreparable injury and a multiplicity of suits would result from the failure of the court to take jurisdiction and grant the relief asked. All of the authorities hold the collection of a tax may be enjoined when these facts exist. (Wilson *vs.* Lambert, 168 U. S., 611, citing Downs *vs.* Chicago, 78 U. S. (11 Wall.), 108; U. P

Ry. *vs.* Cheyenne, 113 U. S., 573; Ogden *vs.* Armstrong, 168 U. S., 224, and 2 Dill. Mun. Corp., 4 ed., 922; Davis *vs.* Wakelu, 156 U. S., 680; Cummings *vs.* Merchants' Natl. Bank, 101 U. S. (11 Otto), 153, and Dodge *vs.* Woolsey, 59 U. S. (18 How.), 331, cited in original brief.)

Respectfully submitted.

STOCKSLAGER & HEARD,
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JOHN R. WINN,
JOHN G. HEID,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

THE ALASKAN LICENSE CASES.

A. W. CORBUS, *Appellant*, v. THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 10.
CHARLES STEWART, *Appellant*, v. THE WASHINGTON AND ALASKA STEAMSHIP COMPANY ET AL.	No. 13.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, v. THE UNITED STATES.	No. 26.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, v. THE UNITED STATES.	No. 29, 30, and 31.

Appeals from the United States District Court for the District of Alaska.

POINTS MADE IN ARGUMENT BY COUNSEL FOR APPELLANTS WITH AUTHORITIES AND APPENDIX.

THE PROCEDURE.

Counsel for the United States begins his brief, filed subsequent to the oral argument, as follows:

> "The theory of the other side is that these license taxes collected in Alaska are general taxes; that they are levied for the benefit of the United States, and since they are not uniform throughout the United States they are unconstitutional. If they are general taxes, I submit that a proper method of procedure has not been used to test their constitutionality."

Our theory could be better stated perhaps by saying that they are *specific taxes*, levied and collected by a special statute; but that they are *general* as contradistinguished from *local taxes*, levied by Congress, as the legislature of Alaska, in that they are required to be paid into the *general* Treasury of the United States, to be used for *general* purposes, and not *locally for Alaska*.

The Government in seeking to avoid one dilemma falls into another equally great.

For the purpose of avoiding the uniformity clause of the Constitution, it is insisted—

1st. That these license fees are not taxes, but regulations under the police power, and as such are authorized by article 4, section 3, of the Constitution, and—

2d. If taxes, then they are *local* taxes, levied by Congress, as the legislature of Alaska, and as such not subject to the uniformity clause. But for the purposes of the procedure the effect of their argument is that they are general taxes, and we have for that reason mistaken our remedy.

This piece of legislation is unique, in that it levies these specific taxes and provides for their collection in a mode different from any other which we have been able to find. They are neither levied nor collected through the machinery of the Treasury Department, but wholly through the machinery of the courts. No appeal is provided for as in the case of internal revenue and customs duties, but it is made a criminal offense to carry on the classes of business enumerated without paying the taxes in advance and procuring the license.

It is clear, therefore, that the ordinary rules governing the resistance to the payment of illegal taxes are inapplicable.

In Cheatham *vs.* Norvekl, 92 U. S. (2 Otto.), 85, Mr. Justice Miller, speaking for the Court, said:

> "All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them
>
> These measures are not judicial; nor does the government resort, except in extraordinary cases, to the courts for that purpose. The

revenue measures of every civilized government constitute a system which provides for its enforcement by officers commissioned for that purpose. In this country, this system for each State, or for the Federal Government, provides safeguards of its own against mistake, injustice or oppression, in the administration of its revenue laws. Such appeals are allowed to specified tribunals as the law-makers deem expedient. Such remedies also, for recovering back taxes illegally exacted, as may seem wise, are provided. In these respects, the United States has, as was said by this court in Nichols *vs.* U. S., 7 Wall., 122 (74 U. S. 125), enacted a system of corrective justice, as well as a system of taxation, in both its customs and internal revenue branches. That system is intended to be complete. In the customs department it permits appeals from appraisers to other appraisers, and in proper cases to the Secretary of the Treasury; and, if disatisfied with this highest decision of the Executive Department of the Government, the law permits the party, on paying the money required, with a protest embodying the grounds of his objection to the tax, to sue the Government through its collector, and test in the courts the validity of the tax.

So, also, in the internal revenue department, the statute which we have copied allows appeals from the assessor to the Commissioner of Internal Revenue; and if dissatisfied with his decision, on paying the tax the party can

sue the collector; and if the money was wrongfully exacted the courts will give him relief by a judgment, which the United States pledges herself to pay."

None of these remedies are applicable in these cases. The applicant must pay in advance, or his business is illegal and he is subjected to heavy penalties and imprisonment, and each day he does business is declared by the statute to be a separate and distinct offense. No provision is made for appeal, or the bringing of suit, as the money is required by law to be *covered into the Treasury*, from whence it can be drawn only by virtue of an appropriation by Congress.

The Pollock Case as Authority.

The opening paragraph of the decision by Mr. Chief Justice Fuller, in the case of Pollock *vs.* Farmer's Loan and Trust Co., (157 U. S. 429), settles the principle that a court of equity will entertain jurisdiction to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits.

That decision also settles the doctrine that the collection of a federal tax may be enjoined by the United States courts.

It is true, as suggested by counsel for the Government that in the Pollock case the United States did not insist upon the jurisdictional question, and so far as counsel could do so, the question was waived; but it is likewise true that the question was raised by the court, considered and passed upon, of which fact counsel is abundantly cognizant, as he has copied in the appendix to his brief, nearly three pages from the dissenting opinion of two of the Justices filed in that case upon this very point (pp. 54, 55, 56, and 57).

The question is, therefore, just as fully settled as it is possible for a decision of the Court, upon the precise point, to settle it.

But it is contended that these cases must be distinguished from the Pollock case, for the reason that in that case the company was acting in a fiduciary capacity for other corporations and individuals, while in the cases at bar the corporations did not act in any such capacity. It will hardly be denied that the corporation acts in a fiduciary capacity towards its stockholders in precisely the same way it does to others whose interests it has in charge. Certainly courts of equity will just as carefully guard the rights of stockholders as of those occupying no such relation. See authorities cited in our original brief p. 11.

In the case of Thompson *vs.* Union Pacific Rail-

road Co., 76 U. S. (9 Wall.), 579, Mr. Chief Justice Chase sustained a suit in equity in the United States Courts by certain stockholders against the company and the treasurers of certain counties in Kansas, to enjoin the payment of an illegal State tax, although the facts alleged were admitted by the company and also as to the amount of the tax by the treasurers, and the case was submitted upon an agreed statement of facts. Even this was not considered as showing collusion for the purpose of giving the United States courts jurisdiction, or as evidence of bad faith; and although the record shows the Attorney General argued the case in this court, it does not appear the bill was served upon, or any appearance was made below, by the representatives of the United States.

In the case of Smyth *ex.* Ames, 169 U. S., 466, Mr. Justice Harlan delivering the opinion of the court, it was held that the United States courts had jurisdiction of a bill in equity by stockholders of a railroad company against the company and others to test the constitutionality of a statute of Nebraska regulating rates for transportation by the railroad company, notwithstanding the fact that it was urged that a section of the same statute authorized the railroad company to show, in a proper action brought in the Supreme Court of the State that the rates therein prescribed are unreasonable

and unjust, and hence that there was an adequate remedy at law.

In the case of Wilson *vs.* Lambert, 168 U. S., 611, Mr. Justice Shiras held:

> "That courts of equity undoubtedly have jurisdiction in cases where an attempt is made to enforce special assessments for public parks in the District of Columbia, which is unconstitutional, because the remedy at law could not be regarded as plain and adequate."

No Remedy at Law.

In these cases it is insisted complainants had an adequate remedy at law, which remedy is pointed out by the Government in the brief filed after the oral argument, as an action against the clerk of the court to whom the license taxes were paid under the provisions of section 4 of the Act of May 17, 1884, which is to the effect that the clerk of the court established by that act was made *ex officio* secretary and treasurer of said district, and that as such he was required to receive all moneys collected from fines, forfeitures, or in any other manner, except from violations of the customs laws, and apply the same to the incidental expenses of the said district court and the allowances thereof, as directed by the judge of court, and account for any balances quarterly under direction of the Secretary of the Treasury.

It is insisted that because of this provision of the Act of 1884, the clerk who received the license taxes under the special Act of 1899, making an entirely different provision as to their disposition, received them as the treasurer of Alaska, and that consequently our proper remedy was by an action at law against him to recover back the taxes so paid.

This position is untenable for two reasons:

1. There were no fines or forfeitures provided for by law at that time, except such as the court might adjudge under its general powers and under the general laws. None of the licenses provided for under the Act of 1899, or the penalties attached to a failure to comply, were in existence at that time, nor at any time prior to the act of 1899, hence could not have been contemplated by Congress in the Act of 1884.

2. The Act of 1899, being a complete code of laws and having provided a special method of granting licenses and collecting and accounting for the license fees in a different method, viz: by depositing them all in the Treasury of the United States and being complete in itself, it will control their disposition; and if in conflict with a statute enacted fifteen years before, when there was only one court and one clerk, and before the present duties

were required to be performed, it will be held to be a repeal by implication.

That the subsequent Act of June 6, 1900, amending the Act of 1899, provided that the several clerks should apply a part of the moneys received from licenses granted under its provisions in a manner other than by depositing them all in the United States Treasury, cannot affect these cases. Nor is it important that by said amended act (Sec. 463), it is provided that "all moneys received for licenses by him or them under this act shall, *except as otherwise provided by law*, be covered into the Treasury of the United States." The inference sought to be drawn from the exception italicised, that it refers to the expenditures provided for under the Act of 1884, by no means follows.

This same Act of June 6, 1900, provided that fifty per cent. of the license taxes paid by persons in incorporated towns should be paid to the treasurers of such corporations.

It is evident this was the "otherwise provided by law" referred to in the exception.

We insist that as the court was required to consider all applications and remonstrances, and grant the licenses upon a judicial determination of the questions involved, it was not a mere ministerial act as claimed by the Government, but a judicial function; and that as the clerk was required by the law

to cover all the money received into the Treasury of the United States, which became at once a part of the general fund, there was no one who could have been sued to recover back the money paid, and hence no remedy at law.

But it has been held that even when there is a remedy at law, courts of equity will sometimes entertain jurisdiction.

High, on injunctions, 2d ed., 537, says:

> "The great hardship and oppression of an illegal municipal ordinance imposing discriminating tax on trades, coupled with the severity of its penal provisions and the forfeiture of goods imposed for non-payment of the tax are regarded as affording sufficient grounds for relief in equity, notwithstanding a remedy at law. Citing Gould *vs.* Mayor of Atlanta, 55 Ga., 678."

In the Georgia case a foreign peddler or auctioneer was required to pay to the city 5 per cent of his sales, which was not done, and his goods were levied upon to pay fifty dollars on his first day's sales of one thousand dollars, and a threat that such proceeding would be continued from day to day, and the court held as set out above from the text of High on Injunctions.

The cases under consideration call much more loudly for equitable interference, as the fine for the first day business is carried on without a license

is a sum equal to the license tax; for a second offense, a sum equal to double the amount of the tax; for the third offense, three times the amount of the tax and imprisonment for not less than thirty days and not more than six months. The law also provides that each day's business is done or attempted to be done without a license, shall constitute a separate and distinct offense. For the amount of license taxes and fines which would have been imposed if law had been resisted. See original brief, p. 14, and subsequent one, p. 2.

And when the remedy at law is doubtful, as said by Mr. Justice Brown in Davis *vs.* Wakelee, 156 U. S., 80:

> "Where a court of equity can give relief the plaintiff ought not to be compelled to speculate upon his chance of obtaining relief at law."

It is respectfully submitted that this alleged remedy at law, as urged by the Government, is at least uncertain if not speculative.

In the case of the Pacific Coast Steamship Co., Nos. 29, 30, and 31, and the Pacific Steamship Whaling Co., No. 26, it is insisted no suits were instituted and no cases exist; no one was sued and no one was made a party; that in applying for a license there was no call made upon the court to act in a judicial capacity; that the law might have

provided that the license should be issued by the clerk or by any officer of the District in Alaska.

But the law *does not* so provide. On the contrary it provides for the filing of remonstrances and the trial of issues by the court. In the case at bar it was necessary for the court to determine whether these were American or foreign ships, their seaworthiness, their tonnage by a fixed rule, and such other facts as would satisfy it that the license should issue. In the case of the Pacific Steamship Whaling Co., No. 26, the same facts as to their several vesssels and also the number of cases of salmon canned by it, and in the Corbus case the number of stamps used by that company. All of these facts the court was required to determine, judicially, even when no protest was filed.

The Supreme Court of Indiana, in the case of Castle *vs.* Bell, 145 Ind., 8, at p. 11, a case arising under the liquor law of that State, of 1875, under which applicants for license were required to file their application before the Board of Commissioners of the county where the liquor was to be sold, held:

> "In fact it may be said that a proceeding instituted to obtain a license to retail liquor under the Act of 1875, is in its nature a civil action within the meaning of section 973, R. S., 1894 (Sec. 961, R. S., 1881), which provides that a civil action may be prosecuted or defended by a party in person or by attorney".

This case was followed upon this point, in the subsequent case of Wilson *et al. es.* Mathas, 145 Ind., 193, at p. 491, as follows:

> "It has been held by this court that a proceeding, under the statue of 1875, to obtain a license to sell intoxicating liquors is a judicial proceeding." Citing the Castle Bell case.

The 94th Equity Rule has not been Invoked, and is not applicable.

1. It evidently applies only where it was the duty of the corporation to bring the suit against some one else. But here we have the anomalous situation of their being no one against whom the corporation could have brought suit.

a. It could not have sued itself.

b. It could not have sued the United States.

c. Neither could it have sued the court who granted the license as a judicial function.

2. Again the rule was adopted for the double purpose of preventing parties from getting into the United States courts by collusion; and of preventing the annoyance to the business of corporations by minority stockholders undertaking to do what the majority should have done, in their opinion.

3. Here the United States court was the only judicial tribunal in existence in Alaska, and hence the most important part of the rule can have no application.

4. And, as the corporation could not sue for lack of a defendant, as we have seen, the other branch of the rule does not apply.

The Government's Position.

We invite the attention of the court to the changes made by counsel for the Government in their position since filing their original brief.

In that brief, referring to the procedure, it was said at the bottom of page 12:

> "The Government in this connection rests its argument upon Judge Johnson's opinion."

Counsel also, while severely condemning the mode of procedure in the Corbus and Stewart cases, which were bills in equity by stockholders against the corporation, as encouraging collusive actions, referring to the method pursued in cases Nos. 139, 155, 156, and 157, October term, 1901, now Nos. 26, 29, 30, and 31, October term, 1902, which were in the nature of applications tendering the license fees, but protesting against the law as being unconstitutional, at page 12 said:

> "There were unquestionably practical difficulties which confronted plaintiffs in these cases in contesting the constitutionality of the legislation in question."

In the oral argument, as well as in the brief filed subsequent thereto, counsel not only makes his principal argument against *the procedure* in the cases, but especially objects to the method of procedure in Nos. 26, 29, 31, and 32, wherein recognizing the great practical difficulties counsel originally rested the case on this point on the opinion of the court below.

In the original brief it was also said, and the position was emphasized by italics, that—

> "*Alaska has no distinct treasury and no officer known as treasurer*" (p. 30).

This is followed by the statement that—

> "As the Congress sitting at Washington is the legislature, so the Treasury Department located at Washington is the treasury of Alaska, and Congress presumably knew this when it passed the Act of 1899."

Again at page 32:

> "There being no local treasury in Alaska, Congress could have done no more," &c.

And on page 31:

> "In the first place, there was no separate treasury in Alaska into which the license fee could be paid."

Again on page 33 it is said:

> "If the court will favor any reasonable construction that will sustain the constitutionality of the legislation, then I submit it should favor a construction of the act of Congres now under consideration which interprets its true meaning to be that the license fees imposed by said act are levied and collected for the benefit of the people of Alaska, and to be expended therein. *If Alaska had a local treasury* this construction would be an *unreasonable one, and could not be tolerated even to sustain the constitutionality of the legislation:* but I submit that where there is *no local treasury*, the mere fact that local taxes are paid into the general Treasury of the United States *(that being the only treasury of Alaska)* does not rebut the fair presumption under our constitutional system that local taxes are intended for local purposes only," &c. (The italics are ours.)

While on the other hand, counsel in his oral argument dwelt largely upon the provision in the Act of 1884, making the clerk of the district court the treasurer of Alaska, and upon this theory

maintained that the complainants had an adequate remedy at law by proceeding against such clerk, thus utterly repudiating the position taken in the original brief.

This complete change of attitude, evidently an afterthought, would at least indicate not only a difference, but great doubt on the part of these exceptionably able gentlemen who are managing the interests of the Government; and even viewing the subject from their standpoint, would seem to call for the application to these cases of the doctrine enunciated by Mr. Justice Brown in the case of Davis *vs.* Wakelee, *supra*, that in a case where equity can give relief "the plaintiff should not be compelled to speculate upon his chances of obtaining relief at law."

Again we find the same difference between the positions taken by counsel for the Government in their original brief and in the brief filed subsequent to the oral argument, in discussing the question whether these license taxes could be considered as internal revenue taxes and levied within the purview of section 3226, R. S.

In the original brief, it is said (p. 32):

> "Had Congress regarded these taxes as general excise taxes it would presumably have left the collection of the inland excises to the internal revenue department which collects other

internal revenue duties, and the shipping duties to the collector of customs. On the contrary, the act expressly provides that the clerk of the court shall receive the money and pay the same into the general treasury. *It is therefore obvious that these license fees were not regarded as internal revenue duties* or as part of the general revenues of the Government." (The italics are ours.)

While in the subsequent brief filed, at p. 63, it is said:

"The section (3226, R. S.) applies to any internal tax alleged to be erroneously or illegally assessed or collected. The taxes in question, though provided for Alaska only, must certainly be considered 'internal' taxes in view of the fact that they are levied by the United States and the proceeds therefrom go into the general Treasury. They undoubtedly raise internal revenue."

The Unconstitutionality of the Act of March 3, 1899.

It is not contended that the act providing for these license taxes is in harmony with the uniformity clause of the Constitution, hence we may take this point as conceded, unless one of the following positions assumed by the Government is well taken, viz:

1. That they are not taxes for revenue, but police regulations which are authorized by Art. 4, Sec. 3, of the Constitution.

2. That they are local taxes levied by Congress as the legislature of Alaska, and likewise authorized by Art. 4, Sec. 3, and—

3. That they are conditions upon which the applicants, as foreign corporations were permitted to do business in Alaska, and hence authorized by the same article and section.

If neither of these positions is tenable, then it is, in effect, admitted the act is unconstitutional.

Not Police Regulations.

They are not police regulations, because they apply to occupations and classes of business which do not fall within the domain of police power.

Teideman on State and Federal Control of Persons and Property, p. 493.

St. Paul *vs.* Traeger, 25 Minn., 248.

And authorities cited in reply brief, p. 2.

The fee or tax is in excess of cost of issuing license, and hence is for revenue.

Laundry License Cases 22, Fed. Rep., 701.

Cooley on Taxation says (p. 592):

> "When the grant (license) is not made for revenue, but for regulation, a much narrower construction is to be applied. A fee for the license may still be exacted, but it must be such a fee only as will legitimately assist in the regulation; and it should not exceed the necessary or probable expenses of issuing the license and of inspecting and regulating the business which it covers."

Under this statute it may be conceded that the amount of the fee is a matter within the discretion of Congress, but the question whether it is a fee for regulation merely, as contended by counsel, or a tax for revenue purposes must depend upon the amount the applicants pay and the cost of issuing the licenses in addition to the fee or tax. No regulation is provided and none is necessary.

Counsel have not attempted to show that the tax of $1 per ton on our vessels, which is three and one-third times as much as foreign vessels are charged, and six and two-third times as much as those of the more favored nations pay for the privilege of doing business in American ports, is necessary to pay for the license, which is paid otherwise, or of inspection and regulation which is not provided for (Sec. 4219, R. S.). See also authorities cited in reply brief, p. 2.

But this question is set at rest, so far as the intention of Congress is concerned, by the discussion

upon the sections involved. See extracts from the *Congressional Record* (Appendix).

The Taxes are Tonnage Taxes—Duties.

That the doctrine that license fees involved in the cases of Stewart *vs.* The Washington and Alaska Steamship Co., No. 26, and The Pacific Coast Steamship Company, Nos. 29, 30, and 31, where nothing is required to be done, are "tonnage taxes," and that their exaction of such fees of vessels, enrolled, licensed, and taxed at other ports in the United States, is "the payment of duties" by vessels bound from one State to another, within the meaning of the Constitution, was settled by this court in the cases of—

Inman Steamship Co. *vs.* Tinker (4 Otto, 94 U. S., 338, and

Moran *vs.* New Orleans, 112 U., S. 69.

That as such, if it be held that they are embraced within the terms of the act, it is violative of section 9, article 1, of the Constitution, and is therefore void.

Not Local Taxes.

It is difficult to conceive how it can be contended that taxes which are covered into the general Treasury of the United States, where they become a part

of the general fund, and can be paid out *only* upon subsequent acts of Congress, and may be paid out for any and all general purposes, are *local taxes paid for the benefit of Alaska.*

The admitted facts are sufficient to refute that contention. That these licenses were thus payable is made certain by the law, and that the law was complied with, so far as the cases at bar are concerned, is shown by the letter of the Assistant Secretary of the Treasury printed as "Exhibit A" in Mr. Beck's brief (pp. 37, 38, and 39.). The Act of June 6, 1900, is not retroactive and can have no effect upon these cases.

Not Conditions under which Foreign Corporations may do Business in Alaska.

If it had been the purpose of Congress to require such license taxes from foreign corporations only, it certainly would have given some intimation of such purpose in the act. But, on the contrary, it applies to individuals as well as corporations; to residents and citizens as well as to foreigners. With all due deference, we must say this contention seems to us to be purely imaginary, and were it advanced by less able and conscientious counsel we would be tempted to say it but betrays the weakness of their cause.

Receipts and Expenses of Alaska.

It is attempted to be shown that the taxes provided for under the act in controversy are reasonable, and that they are the only taxes paid by the people of Alaska. Of course, this argument can have no weight in the determination of the question whether the act violates the Constitution of the United States, even were the truth of the assertion admitted.

But, in point of fact, the people pay customs and internal revenue duties just the same as do those in other communities. That they did not pay the expenses of the local government given them by the United States is a matter of small importance, for if we may believe the reports of the Governors of the Territory, they had none worthy of the name, except that which they organized and paid for within themselves. No people owing allegiance to th United States and entitled to their protection were ever, in our whole history, as sadly neglected by the Government as have been these very people of Alaska, the pioneers in that far north country who have been compelled to make a very unequal struggle against almost insurmountable difficulties.

The tables submitted in the Appendix to counsel's brief are very misleading, in our opinion. For instance, Alaska is charged in 1900 with—

Repairs and expenses of steamer Thetis...	$70,000
Expenses of revenue vessels in Alaskan waters	132,000
Customs service	52,367

In 1901 with—

Expenses of revenue vessels in Alaskan waters	$188,500
Customs service	58,245
Light-house service	100,000

And in 1902 with—

Light-house service	$200,000
Expenses of revenue vessels in Alaskan waters	120,000
Customs service	66,000

And in 1903 with—

Light-house service	$126,013
Expenses of revenue vessels in Alaskan waters	150,000
Customs service	65,000

Then there are charged for each year, such as expenses for reindeer, all owned by the Government, salaries of agents at seal fisheries, &c.

None of them are legitimate *local charges.* Are the expenses of revenue vessels, including their repairs, the customs service or light-house expenses considered legitimate local charges against Massachusetts, New York, or Virginia, because they were

on duty in or near their States? It would seem the Treasury Department is hardly fair in making such charges.

But, as before remarked, it is totally immaterial whether the expenses exceed the income from Alaska, so far as the question before the court is concerned, and is brought in only for the purpose of showing that even though the law may be unconstitutional, in equity, they should pay the taxes.

We are entirely convinced that the people of Alaska have paid the United States for much more than they ever received, and that no other part of our people have received as bad treatment at the hands of the Government as they have.

We are unable to see that the case of Ashley *vs.* Ryan (153 U. S., 436), referred to by counsel, has any bearing whatever upon this case. The Secretary of State of Ohio in that case was a ministerial officer, performing a conceded ministerial duty; and, besides, the question of procedure was not considered or passed upon by this court. The Federal question *only* was considered.

Respectfully submitted.

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APPENDIX.

At page 395, vol. 32, part 1, of the *Congressional Record* (3d Session, 55th Congress), what are now sections 460 and 461 of "An act to define and punish crime in the District of Alaska and to provide a code of criminal procedure for said District, approved March 3, 1899" (30 Stats., 1336), together with others, was offered by Mr. Tongue of Oregon.

At page 581, of the same volume, this amendment was reached for consideration and the following colloquay occurred:

The Speaker. Does the gentleman from Oregon regard this as an admissible amendment?

Mr. Tongue. Well, I submit it for the consideration of the House. There may be some question as to a part of it. I think there is no question as to the main part of the provision, however, the part which has not yet been read.

Mr. Grosvenor. Mr. Speaker, the point of order was reserved.

The Speaker. The point of order had been reserved, and the question is whether the amendment is admissable.

Mr. Loyd. I make the point of order that it is not germane to the bill.

Mr. Grosvenor. There is a better and an unanswerable point of order, that this is a measure to raise revenue, and has not come from the Committee on Ways and Means, and has not been referred to that committee. I do not see how you can raise revenue through the instrumentality of a code of criminal procedure for the District of Alaska.

Mr. Payne. This would amend the internal revenue laws so far as the District of Alaska is concerned.

The Speaker. It would amend the internal revenue laws, and would create a crime for the sake of punishing it.

Mr. Tongue. If I may be permitted, I will say that, so far as the main portion of this bill is concerned, it is now a crime in Alaska to import or sell liquor, and almost a crime to drink it there. This amendment proposes to modify the provision in reference to liquor. It seems to me that that portion of it, at least, is germane.

The Speaker. It proposes also to establish a scheme of taxation. This is a proposition to codify the criminal code of Alaska. It would look as if those two things were incompatible.

Mr. Tongue. Is the provision of this amendment

modifying the liquor laws of Alaska incompatible with this bill? This bill deals with that subject.

The Speaker. The difficulty is, supposing you admit that it is not incompatible with that, there are, nevertheless, a great many other things in the amendment which are entirely incompatible with that and everything else.

Mr. Tongue. Those can be separated. That objection applies only to the first section of the amendment, while the remaining portion deals exclusively with the liquor question, and modifies the present liquor laws as contained in this bill.

The Speaker. The amendment is offered as a whole. If any of it is obnoxious to the objection, it would all have to be ruled out.

Mr. Tongue. If the Chair thinks the first two sections inadmissible, then I ask to strike them out and move the remainder as an amendment.

Mr. Moody. I reserve the point of order against that, Mr. Speaker.

Mr. Dockery. What is the remainder?

Mr. Tongue. The remainder deals wholly with the liquor question.

At page 2235, vol. 32, part 3, same session, when the bill was being considered in the Senate, the provision with reference to license was offered as

a substitute for sections 461 and 462, when Senator Chandler made the folowing observations and inquiries:

> "The sections which are now being read appear to be all new additions to the bill proposed by the Senate Committee on Territories. There appears to be a very elaborate system of taxation by license fees, and then there follow statutes regulating the sale of liquor in the Territory. They seem to have been carefully prepared, but they will, of course, arouse some discussion before the bill is disposed of in the Senate. I only wish now to have from the chairman of the committee, whom I see present, or the Senator from Idaho (Mr. Shoup), tell me, if he can and is willing to do so, from the statutes of what other States these sections have been derived, if they have been taken from similar statutes in other States. What is the origin of those provisions? Are they original with the committee or are they taken from previous statutes in existence elsewhere?"

To his inquiries, Senator Shoup answered as follows:

> "I wish to state to the Senator from New Hampshire that by previous agreement there is to be no action upon these amendments tonight. The license law is practically the same as that of the District of Columbia. I will state not for the purpose of discussion, but

merely for the information of the Senator from New Hampshire, that the license law is taken from that of the District. The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the government of the Territory of Alaska."

To which Senator Chandler replied as follows:

"Do I understand the Senator to say that the body of the license taxes provided for and the liquor licenses are taken from the statutes prevailing in the District of Columbia?"

To which Senator Shoup again made answer as follows: "That is correct."

"The details are somewhat different, but they are based so far as the liquor law is concerned, on the District law. The other licenses are not. They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on Territories, after

consultation with prominent citizens of the Territory of Alaska, including the Governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them."

To which Mr. Chandler again responded as follows:

"Then I understand that the commercial and business conditions in Alaska being peculiar, a special code of license taxes has been devised."

To which Mr. Shoup replied: "That is correct".

BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

A. W. CORBUS, APPELLANT, *v.* THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 53.
CHARLES STEWART, APPELLANT, *v.* THE WASHINGTON AND ALASKA STEAMSHIP COMPANY et al.	No. 71.
THE PACIFIC STEAM WHALING COMPANY, appellant, *v.* THE UNITED STATES.	No. 139.
THE PACIFIC COAST STEAMSHIP COMPANY, appellant, *v.* THE UNITED STATES.	Nos. 155, 156, and 157.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

ARGUMENT FOR THE UNITED STATES.

I.

LEGISLATION UNDER CONSIDERATION.

These six cases involve the constitutionality of the act of March 3, 1899 (30 Stats., 1336), entitled "An

act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for said district."

Section 460 provides as follows:

> That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:

Then follows a list of forty-two callings and occupations, among which, applicable to the present case, are the following:

> Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.
>
> Mines: Quartz mills, three dollars per stamp per year.
>
> Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of

under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

Section 461 makes it a misdemeanor to engage in any of the occupations referred to in said act without first obtaining a license.

Section 462 prohibits the traffic in liquors except as provided in subsequent portions of the act.

Section 463 is as follows:

That the licenses provided for in this act shall be issued by the clerk of the district court or any subdivision thereof, in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon. The clerk of the court shall be entitled to receive from each applicant for a license a fee of five dollars, and no other or additional compensation shall be paid such clerk for his services in connection with such license or the issue thereof: *And provided*, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and all moneys received

> for licenses by him or them under this act shall be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe.

Sections 464, 465, 466 provide for liquor licenses under certain conditions.

Section 467 provides as follows:

> That no license under this act shall be issued for a greater period than one year, and no license can be transferred by the licensee to any other person except with the written consent of the court by authority whereof the same shall issue, upon application thereto in writing.

Sections 468, 469, 470, 471, 472, 473, 474, 475, 476, 478 contain further provisions with reference to the liquor licenses.

By subsequent legislation (acts of June 6, 1900, 31 Stat. L., 321, and March 3, 1901) 50 per cent of these license fees were directed to be spent for schools and other municipal purposes in Alaska.

II.

NATURE OF PROCEEDINGS.

The cases at bar are six in number, and a brief statement may be made as to the nature of proceedings in each:

(1) In *Corbus* v. *The Alaska Treadwell Gold Mining Company* (No. 53, October term, 1891) Corbus filed, on July 17, 1899, a bill in equity against The Alaska Treadwell Gold Mining Company, which, after averring that the defendant company was a corporation duly incorporated under the laws of the State of Minnesota,

alleged that he, the said Corbus, was the owner of 100 shares of its capital stock; he further alleged that it was the intention of said company, "acting by its said general superintendent in Alaska," to pay the license tax for the year beginning July 1, 1899. Complainant then alleges that said tax is unconstitutional, and therefore should not be paid. Paragraph 8 avers that complainant "has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but he has made such requests of the officers or agents of said company controlling its business in Alaska, but they have failed and refused not to make such application and pay such tax, for the reason that, though they doubt the constitutionality of said law, the pains and penalties imposed by said act are so severe that said company and its said officers and agents fear, and have reason to fear, the great loss and injury in defending prosecution that might be brought against it for the failure to comply with it; that they deem it better to submit to the illegal tax than to incur the consequences of the failure to comply with it."

The bill further avers that the payment of said tax would diminish the dividends to be declared on the stock of said company; and "that unless the company should comply with said act or this court grant the relief herein prayed for, the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by

the said act, and its assets and the value of its shares would be thereby greatly lessened, to the great and irreparable injury and damage to your orator and other shareholders in said company."

The bill therefore prayed for an injunction, which was preliminarily granted.

A subpœna was served on the defendant company on July 19, 1899; no appearance was entered, but on November 15, 1899, the defendants filed a general demurrer, which, on January 2, 1900, was sustained, and the said bills dismissed. This appeal was thereupon taken, and the case was originally heard in this court on April 25, 1901.

No counsel appeared for the defendant in error and no brief was filed by him. The case was restored by the Supreme Court, of its own motion, to the docket, and the Government, while not a party to the record, files this brief as *amicus curiæ*, because of the direct interest which the Federal Government has in the question involved.

In the Corbus case the license tax was imposed upon the operations of certain quartz stamp mills, and the conducting of a mercantile establishment.

(2) In the case of *Stewart* v. *Washington and Alaska Steamship Company, Fredrick Dodwell, and H. C. Wallace, defendants* (No. 71, October term, 1901), the bill averred that the steamship company was a corporation organized under the laws of the State of Washington, and that Dodwell is its treasurer, and Wallace its president; the said company own a steamship called the *City of*

Seattle, whose home port was Tacoma, in the State of Washington, and that said Dodwell and Wallace both live in Tacoma; that said steamship is employed in the transportation of freight and passengers from Tacoma and Seattle to Alaskan ports, and that it "did a coasting trade within the said district of Alaska" before the passage of the act of March 3, 1899, but has not carried on any coasting trade or business since. The bill proceeds to aver that the plaintiff is a stockholder in said company, and that the company, "acting by and through said Wallace, its president, and said Dodwell, its treasurer," intends to, and unless restrained by an order of this court, will pay to the clerk of this court the sum of $767 of the money and funds belonging to the said Washington and Alaska Steamship Company * * * for the purpose of obtaining a license to carry on a coasting trade and business within the District of Alaska, under the said act of Congress approved March 3, 1899.

Complainant proceeds to aver that no license is required for the various reasons therein set forth. The bill fails to aver any demand on the officers of the company not to pay the said license fees, but suggests that unless the defendants be restrained from such payment "your orator would be compelled to commence many suits for the purpose of maintaining his rights, and the moneys and funds of said corporation would be wasted, misappropriated, lost, and destroyed in an amount in excess of $5,000."

The bill was filed on November 7, 1899, and served

upon the agent of the defendant company on November 18, 1899, and on November 7, 1899, a preliminary injunction was granted, and the defendants were "allowed to pay said money into the registry of the court pending the hearing and final determination of the rights of the parties herein." Upon which payment a license was directed to be issued. On November 24, the defendants filed a formal demurrer to the bill, and it appears from the opinion of the court dismissing the bill that "the attorneys for the defendants (referring to this case and the preceding case of *Corbus* v. *Alaska Treadwell Gold Mining Company*) did not contend for his demurrer, made no argument, and filed no brief in support of the same." Copies of the bills having been served upon the district attorney, he asked and obtained leave of the court to appear as amicus curiæ, and in that capacity appeared and denied that the court had any jurisdiction under any of the forms of action presented to hear and determine the cases upon their merits.

For the purpose of procedure the Stewart case is even weaker than the Corbus case, as there is no excuse suggested for failing to make a preliminary demand upon the management of the company not to pay the tax. The pleadings in the case and the suggestions attending it do not seem to differ from that in the Corbus case, as will appear from the opinion of the court.

(3) In the other four cases (Nos. 139, 155, 156, and 157, October term, 1901) petitions were filed by the

appellants in the district court of Alaska on July 6, 1899, which, after averring that each of the applicants is a corporation, incorporated under the laws of the State of California, aver facts which admittedly bring them within the taxing provisions of section 460, above cited.

In *Pacific Steam Whaling Company* v. *United States* (No. 139, October term, 1901), petitioner avers that it is the owner of certain vessels which are employed "in the transporting of freight and passengers between the different ports in the District of Alaska, doing a local business in said District in the prosecution of her voyages to and from different ports in the District of Alaska and carrying freight and passengers for hire." It further avers that it was engaged in the District of Alaska in the business of carrying on salmon canneries at certain places, and while asking for a license to conduct said local steamship business and the said salmon canneries, it denied the constitutionality of the act of Congress providing for said license.

In the three Pacific Coast Steamship Company cases (Nos. 155, 156, and 157), petitioner avers that it is the owner of a certain steamship which is engaged "in the transportation of freight and passengers from the port of Seattle and other ports on Puget Sound and the port of Victoria, British Columbia, to ports in Alaska." It further avers that, "incidentally, it does a local business in the said District of Alaska in the prosecution of her voyages to and from Alaska in the business first mentioned herein." Which business, it

further avers, is "very small and inconsiderable" and "merely incidental to the main business of carrying by said steamer between ports and in the manner hereinbefore stated."

The averments of these three petitions are almost identical, and do not differ in principle.

In all four cases the petitioners, while protesting that the act is unconstitutional, pray, in substance, that the court shall first determine whether the act in question is valid, and if so, that the court shall grant a license thereunder upon the payment of the tax.

As these were mere applications for a license, and were not suits against any litigant, no process was ever served upon the United States or any party defendant. In the argument of the cases, however, it appears that a copy of the petition and protest were served upon the United States attorney, who, by leave of the court, appeared as *amicus curiæ*. The court granted the applications for the licenses in question and directed the license fees, which the applicants had deposited in the registry of the court pending a decision as to their legality, to be paid by the clerk of the court into the United States Treasury, unless an appeal were taken. The applicants thereupon took an appeal and gave the United States attorney notice of it, and in the citation issued the United States is referred to as the appellee.

III.

PROPRIETY OF PROCEDURE.

The lower court held that all six plaintiffs had not raised the questions involved in these proceedings by appropriate procedure. There is much force in the conclusions of the court below in this respect, especially in the two cases (Corbus and Stewart cases), where the action was in the form of a stockholder's bill. This method of determining the rights of the Government in a proceeding between private parties, who in form litigate adversely but who are both benefited by a decree in favor of the plaintiff, is very objectionable, and only to be tolerated when some public exigency, such as existed, when the case of *Pollock* v. *Farmers' Loan and Trust Company* (157 U. S., 229), was argued at the bar of this court.

It is not necessary to elaborate the reasons stated by the learned judge of the court below in disposing of these cases for want of proper procedure. He has shown the clear distinction which exists between the Corbus and Stewart cases and that of *Pollock* v. *Farmers' Loan and Trust Company* (*supra*). So far as the Corbus case is concerned, his finding of fact as to the collusive nature of the suit is emphasized by the subsequent progress of the case, for when the Corbus case was called for argument in the Supreme Court no counsel appeared for the defendant company (appellee) and no brief was submitted by it.

This court, presumably in recognition of the fact that the proceeding was not adverse, restored the case

to the docket for oral argument; and so far as the Corbus and Stewart cases are concerned, the Government again earnestly protests against this method of determining its rights in proceedings to which it was not made a party, and in which both parties litigant are interested and benefited by a decree for the plaintiff. It is obvious that the interests and rights of the Government are affected by the proceedings, and the court should discourage a method of procedure which seeks to deprive the Government of revenue without giving it a day in court. In the case of *Pollock* v. *Farmers' Loan and Trust Company* the Government formally waived its objection to the method of procedure so far as it could waive it. In the Corbus and Stewart cases it refuses to do so, and protests against a method of determining its rights, which, it submits, is opposed to sound public policy. Collusive proceedings are never favored.

The method of procedure in the four other cases (Nos. 139, 155, 156, and 157, October term, 1901) is less objectionable. There were unquestionably practical difficulties which confronted the plaintiffs in these cases in contesting the constitutionality of the legislation in question. The court below was of opinion that these practical difficulties did not justify a method of procedure whereby the plaintiffs in asking for a license at the same time disputed the validity of the law which provided for its issuance. The Government in this connection rests its argument upon Judge Johnson's opinion.

IV.

THE CONTENTION OF THE GOVERNMENT.

Assuming that the court reaches the conclusion that it should take cognizance of these proceedings, I pass to the constitutional questions involved in the case, and I shall contend as follows:

I. The power to impose these license fees is not derived from the general power of taxation provided for in article 1, section 8, of the Constitution, but from the plenary power "to make all needful rules and regulations respecting the territory or other property belonging to the United States" (art. 4, sec. 3). The exercise of such power is, therefore, not subject to the provision limiting the general power of taxation either as to apportionment or uniformity.

In this connection I shall further argue:

(1) The license fees are a part of a penal code, and in the nature of police regulations, and in the judgment of Congress are necessary for the due government of the Territory by reason of its peculiar conditions.

(2) So far as appellants are concerned, the fees are not taxes in the proper sense of the word, but are the consideration which they, as foreign corporations, pay for the privilege of doing business in Alaska.

(3) If taxes at all, these license fees are local taxes imposed by Congress as the legislature of Alaska and paid into the Treasury of the United States as the only treasury of Alaska, and obviously intended to meet the expenses of governing this unorganized territory.

V.

THE CESSION OF ALASKA.

Before discussing the questions above stated in their order, it may be desirable to make a brief historical statement as to the cession and present political status of Alaska, as the constitutional questions must of necessity be discussed with a full consideration of such political status.

Alaska was originally settled by the Russians in 1805. At the time of its cession to the United States by the Emperor of Russia it was in no respect a political entity, but simply a geographical subdivision of the Russian Empire. Its form of government, if it can be said to have any, has been fully considered by this court in the case of *Kinkead* v. *United States*, (150 U. S., 483, 490).

In October, 1867, after the treaty of cession to the United States (act of March 30, 1867, 15 Stat. at Large, 539), a formal transfer was made of this vast region, which aggregated 575,000 square miles. At that time the inhabitants consisted approximately of 500 whites and 30,000 uncivilized aborigines. With the exception of a few inhabitants, who had a title to their individual land holdings, the territory became the physical property of the United States. Its possession was not only the ordinary possession of a sovereign power as the *ultima hæres*, but was a direct and immediate right to the soil as the universal landowner of Alaska. As such it almost wholly remains to-day.

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After the transfer to the United States Alaska was governed by a company of United States soldiers and a deputy collector of customs, it having been made a customs district by the act of July 27 1868.

This system of government continued until June, 1877, when the order came to withdraw the military forces from Alaska. Thereupon the government of the Territory was conducted solely by the Treasury Department, acting through a deputy collector of customs and a few subordinates. So little concern was paid by the Federal Government to this vast region that it was proposed in July, 1878, to abolish the customs district, and when, in 1879, a considerable insurrection broke out among the natives, the white inhabitants appealed to the authorities of British Columbia for protection. The Federal Government sent a war ship, and from 1879 to 1884 Alaska remained under the control of the Navy Department.

During all this time no title could be procured to any land, as the entire domain, with the few exceptions noted, was regarded as the physical property of the Federal Government.

On May 17, 1884, Congress passed an act which is known as the "organic act," although it in no sense organizes the Territory into a self-governing political entity. Reference to that act will show that if it was the intention to create an organized government, such organization was of the most embryonic character according to our standards of government. The form of

government provided for the appointment by the President of a governor, in whom the executive authority was lodged, and for the creation of a district court having civil and criminal jurisdiction. The general laws of the State of Oregon were declared to be the law of said district, and a United States land office was created.

In the judgment of Congress no civil government, in the proper sense of the word, was possible. No suffrage was given the inhabitants. There was and is no electorate or political community, and therefore no local legislature. It was evidently not regarded as a Territory, for section 1882, Revised Statutes, declares that every Territory shall have the right to send a delegate to the House of Representatives of the United States, but Alaska has never been accorded this right, showing the belief of Congress that it was and still remains unorganized territory. This was not merely an oversight, for during the seventeen years during which Alaska was without civil government more than twenty-five bills for the organization of the Territory had been introduced in Congress and failed of passage.

Two things conspired, however, to call the attention, not merely of the United States but of the entire world, to Alaska. One was the discussion as to the seal fisheries, and the other was the discovery of gold in the Klondike region. This led to a large relative increase in the population, which by the census of 1900 is estimated to be as follows: Whites, 30,507;

Indians, 29,536. This increase of population led Congress to provide the acts of March 3, 1899, whereby a criminal code was provided for Alaska, and the act of June 6, 1900, whereby a civil code was provided for Alaska; but the form of the government still remains unchanged. Congress still governs this vast domain through a governor, who is appointed by the President. A judicial system has been organized, and the Treasury Department still continues the territory as a collection district. There is, however, no political entity or body politic known as Alaska; it is a district but not a territory; there is no local legislative body competent to make laws, and no citizenship of Alaska as such to elect representatives. No right of suffrage exists. Its only legislature is Congress, its only governor the representative of the President, its only treasury the Treasury of the United States. The expenses of the government have been defrayed by appropriations from the Federal Treasury, and until the act of March 3, 1899, no attempt was made to exact any local taxes.

In discussing the constitutional questions, therefore, it must be steadily borne in mind that the court is called upon to deal, not with a political entity or organized territorial government, but with a stretch of land largely a wilderness, inhabited by a relatively small population of whites, to whom Congress in its wisdom has not yet seen fit to give the privilege of creating an organized Territorial government.

VI.

(1) The power to impose these license fees is not derived from the general power of taxation provided for in article 1, section 8, of the Constitution, but from the plenary power to make all needful rules and regulations respecting the territory or other property belonging to the United States. (Article 4, section 3.) The exercise of such power is, therefore, not subject to the provision limiting the general power of taxation, either as to apportionment or uniformity.

The powers of Congress with respect to the Territories and the limitations upon such powers were so fully discussed in the Insular Cases that no extended reference is now necessary. It is sufficient to say that if these license fees were not imposed under article 1, section 8, of the Constitution, they are not subject to the limitations contained in that specific provision. If, therefore, these licenses were imposed under article 4, section 3, of the Constitution, and are needful regulations for the due government of the Territory, then the limitations as to apportionment or uniformity are not applicable. The power to make such needful regulations is plenary and exclusive, save as expressly restricted by other *applicable* provisions of the Constitution.

To support my contention that the legislation under consideration is enacted as needful regulations, I suggest—

(1) *The license fees are a part of a penal code, and in the nature of police regulations, and in the judgment of*

Congress are necessary for the due government of the Territory by reason of its peculiar social conditions.

Neither the title nor the body of the act nor the particular provisions under consideration suggest the ordinary taxing statute. The act (31 Stat., 1253) is entitled: "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for said district."

Its first section constitutes a political subdivision which it calls the "district of Alaska." Then follows an elaborate penal code for the government of its inhabitants, and as an incident to such penal code the paragraph now under consideration was inserted, requiring any person, corporation, or company to obtain a license before prosecuting, or attempting to prosecute, any of the occupations referred to in said paragraph. It is significant, moreover, that the collection of these fees is not left to the collector of customs or of internal revenue, as ordinary excise taxes always are, but are payable to and collected by the clerks of the Alaskan courts.

When regard is had to the peculiar social conditions in Alaska, it is clear that these provisions are intended primarily for the purposes of police regulation, and that the revenue to be derived therefrom is only incidental in nature. The small population of whites had been suddenly increased by the discoveries of gold in the Klondike, and, as in the case of California, an

extraordinary rush of adventurers and fortune hunters from all parts of the world had followed.[a]

It is obvious that with such an invasion of men who, in many instances, were irresponsible adventurers, it was necessary that there should be some governmental supervision of those who should embark in business, and Congress deemed it wise to vest such supervision in the judicial department of the Government by providing, in section 463, that every person, corporation, or company which intended to embark in business, of the kinds mentioned in the act, should apply to the court for a license, and that the granting of this license should be the subject of recommendations or remonstrances by the citizens of Alaska; and that the court, having due regard to such recommendations or remonstrances, should grant or refuse the license in question. This is obviously a police regulation, and differs wholly from the ordinary licenses of the United States internal

[a] Men came from Maine, Texas, Minnesota, and Dakota, and from all the mining regions of the Rocky Mountains. Some had well-matured ideas and plans, and were going with the intention to prospect and mine. Some were of the sporting class and intended to gamble and get through on their wits. The fever was in the air and the blood. It was, as Petrucio says:

> "Such wind as scatters young men through the world,
> To seek their fortunes farther than at home,
> Where small experience grows."

Large outlays were made for gambling, furniture, theatrical outfits, liquors of all kinds, tobacco in every variety. Variety performers, indifferent, bad, and very bad, were in evidence. Prostitutes under various guises and under no guise at all joined the rush. * * * This stampede to Nome is unique. There is nothing in the history of the country like it. The arrivals on the ocean vessels to July 15 were 18,000 souls. One hundred and sixty-two steamships and 70 sailing vessels arrived up to August 1. (Report of Governor of Alaska, 1900.)

revenue, which, as stated in the License Cases (5 Wallace, 462), are not licenses in the proper sense of the term, but simply the method of collecting the annual tax. *In Alaska, however, the supervision of the business through a license is the primary purpose of the act, and revenue is but an incident*, whereas with the ordinary liquor licenses under the internal-revenue system revenue is the primary purpose and the license an incident to it.

In the case of *Wiggins Ferry Company* v. *East St. Louis* (107 U. S., 365), a license fee imposed by the State of Illinois upon a domestic corporation for the privilege of running a ferry between a point in that State and a point in Missouri, was under consideration. As to the nature of such a license fee this court said:

> The power to license is a police power, although it may also be exercised for the purposes of raising revenue. We can not say, as a matter of law, that when a municipal corporation is authorized "to regulate, tax, and license ferry-boats," the imposition of a license fee of $100 per boat is not within the power to regulate and license, and is consequently not within the police power.

Again, page 375, the court say:

> The power of the State of Illinois to authorize any city within her limits to impose a license tax on trades or callings generally, especially those which are quasi public, can not be disputed. Draymen may be compelled to pay a license tax on every dray owned by

> them, hackmen on every hack, tavern keepers on their taverns in proportion to the number of rooms which they keep for the accomodation of guests. We do not think that the Constitution of the United States, by the section which prohibits a State from laying a duty of tonnage, protects the keeper of a ferry from a similar tax upon the boats which he employs. Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists. The license fee exacted is, in effect, laid upon the business of keeping a ferry; for it is not laid upon all boats owned by the ferry keeper, but only on those plying between the two banks of the river, and is graduated by the number of boats used by him.

It is true that in this case the constitutionality of a State statute was under consideration, but in legislating for Alaska Congress has all the powers both of the Federal Government with respect to the States and of the State governments with respect to their domestic concerns. See also *Ficklen* v. *Shelby County*, 145 U. S., 1, 23, and *Munn* v. *Illinois*, 94 U. S, 113.

The licensing of persons to sell liquor is not an exercise of the taxing power of the State to raise revenue, but of the police power for the regulation and restriction of a dangerous business; it follows that the adjustment of fees for the license is not governed by the constitutional provisions requiring equality and uniformity of taxation. Black on Intoxicating Liquors; *Thomason* v. *State*, 15 Ind., 449. See also Black on Intoxicating Liquors, sec. 108, and cases there cited;

also sections 109 and 179; *Lovingston* v. *Board of Trustees*, 99 Ill., 564.

In *Thomasson* v. *State* (*supra*), a license fee of $50 had been imposed by an act of the legislature of Indiana as the consideration for the privilege of selling liquor. It was held to be void under a provision of the constitution of Indiana, which provides that taxation shall be uniform. The court held otherwise, saying:

> It is claimed that the fee for license, $50, is a tax upon a particular pursuit, and as such is prohibited by section 1 of article 10 of our constitution, providing for a uniform rate of taxation. But it has been decided that that section relates to the general levy alone. (*The Bank* v. *The City of New Albany*, *supra*; *Anderson* v. *The Kerns Draining Company*, 14 Ind., 199.) See, as to unlimited taxing power, Ind. Dig., sec. 16, p. 761. The license upon retailing is an excise. (1 Story on the Const., p. 670.)
>
> An excise is an indirect tax; but in this case taxation was not the object of imposing it, and the legislature was not bound to appropriate its proceeds to any object for which the State is forbidden to raise money by local or special taxation. It was imposed in the exercise of the rightful police power of the State, and is an incident of a legitimate police regulation. Hence, it is not within the prohibition of the twenty-second section of the fourth article of the constitution, prohibiting local and special taxation for State purposes. (See 7 How., 283; 2 Story on the Constitution, p. 10, et seq.)

In *Lovingston* v. *Board of Trustees* (99 Ill., 564) a similar license fee for the sale of liquors was held not to be a tax within the constitutional provision of the State of Illinois requiring equality and uniformity. The court say:

> But it is next urged that these license fees are a tax, and they are illegal because they are not uniform. We have been unable to find anything from which it may be inferred that the fees received from dramshop licenses by the city were not uniform in amount and the period for which they were to run. This would seem to be a complete answer to that position.
>
> In the cases of *The People* v. *Thurber* (13 Ill., 554) and *East St. Louis* v. *Wehrung* (46 id., 392) it was held that a fee received for a license granted by a municipal corporation, authorizing the sale of liquor, was not a tax, in a constitutional sense, and not being a tax in that sense, it did not violate the constitutional requirement of equality in the levy of taxes.

The power exercised in providing this system of police supervision is, therefore, not the general taxing power under article 1, section 8, but is referable to the distinct power under article 4, section 3, of providing "needful rules and regulations respecting the territory or other property belonging to the United States." It is, therefore, unrestricted as to uniformity.

The Constitution requires uniformity of taxation, but does not require uniformity of police supervision. The power of Congress to adapt its police regulations, or, to use the term of the framers of the Constitution, its "needful

regulations" to the peculiar conditions and needs of each separate territory seems clear. The framers wisely avoided any attempt to create uniformity where uniformity was impossible.

If, therefore, this paragraph 460 can be clearly held to be, in common with the other provisions of this act, a needful regulation of a police character rather than a revenue statute, even though as a mere incident to such police regulation license fees are exacted, then it is constitutional, and, to use the words of Mr. Justice White (*Downes* v. *Bidwell*, 182 U. S., 292), it "is not to be measured by the provision empowering Congress 'to lay and collect taxes, duties, imposts, and excises,' and is not restrained by the requirement of uniformity throughout the United States."

It is true that Mr. Justice White had reference in these words to a levy of "local taxes for local purposes within the territories," but the underlying principle to which I understand him to give utterance is that if a given exercise of legislative power is referable and justified by the power to make needful regulations, even though it incidentally has the characteristics of taxation, it is not subject to a restriction imposed upon the *general* powers of taxation. The two powers are independent, and if the present provision be a "needful regulation" it is justified without respect to the taxing clause of the Constitution.

(2) *So far as appellants are concerned the fees are not taxes in the proper sense of the word, but are the consideration which they, as foreign corporations, pay for the privilege of doing business in Alaska.*

A true license is the consideration of a contract whereby the citizen secures some peculiar right or privilege in return for the fee. A tax, on the contrary, secures nothing except the general benefits of government to which the taxpayer is compelled to contribute, and which he shares in common with every other citizen. He can claim no benefit peculiar to himself by reason of the payment of the tax. The License Cases confirm rather than contradict this theory, for there it was held that internal-revenue licenses were not licenses in the proper sense of the term, and conferred no rights upon the holders with respect to the sale of liquor, but were simply methods whereby a compulsory contribution from liquor dealers was enforced. License fees in the true sense of the term, however, differ in principle, for they partake of the nature of a contract with the State, whereby the licensee obtains some peculiar advantage to himself as the consideration for the payment of the license fee. Such fee is, therefore, not a tax or even an excise in strictness, but the consideration of a contract. The present license fees, as have been stated, are of that nature, for the licensees under the act of 1899 obtain a vested right to pursue a given occupation in Alaska for the space of one year, and the value of such right is enhanced by the fact that no one else can pursue such occupation except such as have paid similar fees and obtained licenses. (See cases cited *ante*, pp. 21 to 24.)

Whatever doubt there may be as to whether such license fees are taxes in the nature of excises with respect to indi-

viduals, there can be none with respect to the six appellees in the cases at bar, for each of them is a foreign corporation, having no legal right to transact business in Alaska, or even recognized existence there, except to the extent that the sovereign power in Alaska permits.

Their incorporation had no extra-territorial efficacy, and the privilege of transacting business in Alaska is a matter of grace on the part of the sovereign power of that territory. Congress, which in Alaska exercises the combined powers both of the States and the Federal Government and which practically represents the people of the United States, has, therefore, the right to determine whether a foreign corporation shall be permitted to do business within the limits of that district, and, if so, upon what conditions. The line of decisions commencing with *Paul* v. *Virginia* (8 Wall., 168), and including *Pensacola Telegraph Company* v. *Western Union Telegraph Company* (96 U. S., 1), hold that as corporations are the mere creation of local law, and have no legal existence beyond the limits of the sovereign which created them, they have no right to do business in any other State except by its permission, and upon the terms it dictates.

The act now under consideration, in the exercise of that undoubted power to exclude foreign corporations, provides, inter alia (sec. 460), "that any person or persons, *corporation* or company transacting, or attempting to transact, any of the following lines of business within the district of Alaska shall first apply for and obtain a license so to do from the district court," etc.

Whatever may be said as to the validity of these license fees in the case of individuals, it is clear that as to foreign corporations Congress, as the legislative body of Alaska, may exact from such corporations as a privilege for their right to do business in that Territory a license fee. On the payment of such license fee the corporations obtained a direct return in the form of a recognition of their existence in Alaska, and the right to do business therein. Such license fees are, therefore, not taxes within the meaning of Article I, section 8, of the Constitution, and therefore are not subject to the restriction as to uniformity, but are simply "needful regulations" for the good order and well-being of the territory.

In considering whether these license fees are "needful regulations and not taxes" the court will, I submit, also bear in mind the familiar principle that every presumption "is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the lawmaking power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest." (*Nicol* v. *Ames*, 173 U. S., 509.)

The corollary to this rule of law is the principle that the court will favor any reasonable construction of a statute which will sustain its constitutionality, even though the act if differently construed is unconstitutional.

(3) *If taxes at all, these license fees are local taxes imposed by Congress as the legislature of Alaska and paid*

into the Treasury of the United States as the only treasury of Alaska, and obviously intended to meet the expenses of governing this unorganized territory.

Even though these license fees are held to be taxes within the strict sense of that term, yet they are local taxes and are, therefore, not a tax within the meaning of article 1, section 8, for, as Mr. Justice White said in *Downes* v. *Bidwell* (182 U. S., 292):

> *As Congress derives its authority to levy local taxes for local purposes within the Territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empowering Congress "To lay and collect taxes, duties, imposts, and excises," and is not restrained by the requirement of uniformity throughout the United States.*

As was said in *Gibbons* v. *District of Columbia* (116 U. S., 404):

> The power of Congress, legislating as a local legislature for the District (Columbia), to levy taxes for District purpose only, in like manner as the legislature of a State may tax the people of a State for State purposes, was expressly admitted, and has never since been doubted. (5 Wheat., 318; *Welch* v. *Cook*, 97 U. S., 541; *Mattingly* v. *District of Columbia*, Id., 687.) In the exercise of this power, Congress, like any State legislature unrestricted by constitutional provisions, may at its discretion wholly exempt certain classes of property from taxation, or may tax them at a lower rate than other property.

If, therefore, a reasonable interpretation of the legislation in question will make the tax in question local in character, that construction will be favored and adopted and the act sustained. To construe these license fees as local taxation (if taxation at all) seems to me reasonable, when it is remembered the conditions for which Congress was legislating.

As has been said, the only legislative body in Alaska is Congress, and similarly the only executive in Alaska is the national executive acting through its local appointees. *Alaska has no distinct treasury and no officer known as treasurer.* As the Congress sitting at Washington is the legislature, so the Treasury Department, located in Washington, is the treasury of Alaska, and Congress presumably knew this when it passed the act of 1899. As will appear from the tables hereto appended, Congress has for many years spent large sums of money in Alaska for the benefit of its inhabitants, for which it has received no adequate return in the form of taxes, and the appropriations for Alaska have always exceeded the revenue derived from its people. Prior to the act of 1899 the people of Alaska, although provided with an inchoate form of government distinct from the National Government, made no return therefor in the shape of taxation. In common with the other inhabitants of the States and Territories, they paid the ordinary internal revenue and tariff duties, for which they shared those privileges of the General Government which are common to all the citizens of the Republic, but for the local government which was established for their immediate benefit they made no

direct return in the shape of local taxation, and this notwithstanding that Congress was expending large sums of money in policing the district, establishing courts, protecting its industries, and otherwise promoting the welfare of its inhabitants. Assuming, therefore, that the license fees in question had any other purpose beyond the "needful regulation" of the occupations in Alaska, it is obvious that they were intended to meet the expenses of administering the act for the local government of Alaska, of which act the license fees are a part. It may be said, however, that Congress did not in words restrict the expenditure of the taxes thus collected to local purposes, but for this there were two reasons. In the first place, there was no separate treasury of Alaska into which the license fees could be paid; and in the second place, Congress may well have assumed from the facts within its possession that as the appropriations for Alaska were in excess of any possible receipts from these license fees, that the moneys thus raised were in fact expended locally within the Territory, for the Government was thus recouping itself for a great drain upon the general funds. If so spent in fact, is it important whether the fund was especially earmarked, especially when the only treasury into which the taxes could be paid and held was the general Treasury of the United States? Such construction is strengthened when it is remembered that by the legislation of the subsequent year one-half of said local fees were expressly appropriated for school purposes within the district.

There being no local treasury in Alaska, Congress could have done no more, except to expressly provide that all of these license fees should be appropriated for and spent in Alaska, but if such an intent may be fairly gathered from the act as a whole, will not the court favor the construction which saves the constitutionality of the legislation in question? This view is further supported by the fact that these license fees are imposed as a part of a penal code and are obviously intended to meet the expenses of its administration. Whatever be the theory, the fact is (as appears from Exhibit A.) that all of the moneys that have been raised by these license fees, or by any other means in Alaska, have been expended by the United States in that district for the benefit of its people.

Had Congress regarded these taxes as general excise taxes it would presumably have left the collection of the inland excises to the internal-revenue department, which collects other internal-revenue duties, and the shipping duties to the collector of customs. On the contrary, the act expressly provides that the clerk of the court shall receive the money and pay the same into the general Treasury. It is therefore obvious that these license fees were not regarded as internal-revenue duties or as a part of the general revenues of the Government. In imposing upon the clerks of the district courts the duty of their collection, their distinctive and local character as a fund apart from the general revenues of the Government is emphasized.

In this connection I again invoke the principles of interpretation heretofore stated on page 28, of this

brief. If the court will favor any reasonable construction that will sustain the constitutionality of the legislation, then I submit it should favor a construction of the act of Congress now under consideration which interprets its true meaning to be that the license fees imposed by said act are levied and collected for the benefit of the people of Alaska, and to be expended therein. If Alaska had a local treasury this construction would be an unreasonable one, and could not be tolerated even to sustain the constitutionality of the legislation; but I submit that where there is no local treasury, the mere fact that local taxes are paid into the general Treasury of the United States (that being the only treasury of Alaska) does not rebut the fair presumption under our constitutional system that local taxes are intended for local purposes only, and that reasonable presumption is strengthened by the fact that Congress presumably knew that the appropriations for the local government in Alaska exceeded and would exceed the amount raised from local and general taxation in this unorganized territory.

VII.

ARTICLE 1, SECTION 9, INAPPLICABLE.

Appellants further argued that these license fees, so far as they apply to the steamship companies, are unconstitutional, as repugnant to section 9, Article I, of the Constitution.

It is clear that such clause has exclusive reference to the States. Even were this not the case, no preference

is given to any Alaskan port as against the ports of the various States, nor is any vessel bound from the port of a State and which enters an Alaskan port compelled by reason of that fact to "enter, clear or pay duties." The act only provides that persons or corporations engaged in the shipping business *within* the district of Alaska shall pay a license fee, which is to be measured by the tonnage of such of its vessels as are "doing local business for hire, plying in Alaskan waters." Such license fee, which applies not to ports, nor to the mere entry of vessels from the ports of other countries or States, can not be regarded as a preference due to any port or as an imposition of duties by reason of the mere entrance of vessels into Alaskan ports.

VIII.

CONSTRUCTION OF ACT OF MARCH 3, 1899.

This leads me to the question of construction suggested by the steamship companies in the brief of their counsel, pages 24 to 38.

It is insisted that as the local business transacted by the appellants was only incidental to the commerce between Alaska and the States where the vessels were registered, and as such business was relatively small, the act did not apply, as the vessels were not "plying in Alaskan waters" within the meaning of said section.

In support of this contention it is first suggested that as these vessels had been enrolled, licensed, and registered under the United States navigation laws in the States of their home ports, no double taxation is to be presumed.

In reply, I submit that this is not a case of double taxation, as the taxes are different in character and purpose. These license fees are in no sense registration taxes for vessels. They are license fees imposed upon the companies which own the vessels as compensation for the privilege of transacting the shipping business within Alaska. They are occupation taxes, although measured by the tonnage of the vessels employed in the business.

As previously stated, these taxes are in no sense clearance or entry duties. A vessel which leaves San Francisco and enters the port of Sitka and there terminates its journey may not be within the taxing provisions of the act, which only apply to those doing a local business. The appellants contend, however, that such local business between Alaskan ports must be exclusive of all other business; but this is to read a provision into the act, and would be pure judicial legislation. It may be, as stated by the appellants, that the local business of these ships is only incidental to their through business, and relatively small, but such fact can not relieve the owners of the vessels from paying the license fee.

It is the local business that is taxed, and it is wholly unimportant for the purposes of taxation whether, in addition to such local business, the licensees do other business.

Appellants have urged that these license fees are excessive and burdensome. Such considerations are for the political department of the Government. It

may be observed, however, that the Treasury statistics, set forth in the official statement of the Assistant Secretary of the Treasury and set forth in Exhibit A and appended to this brief, will show that the Federal Government always has and still is appropriating more money for the benefit of Alaska than it receives from its people from any form of taxation. Hitherto, this district has been a drain upon our revenues, and those who are benefited by its natural resources should not complain if they are made to bear to some extent the burden.

Respectfully submitted.

JAMES M. BECK,
Assistant Attorney-General.

EXHIBIT A.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, November 8, 1901.

HON. JAMES M. BECK,
Assistant Attorney-General.

SIR: In reply to your request of the 31st ultimo, relative to the appropriations for Alaska and the disposition of the Government's revenues from the Territory, I submit the following statement:

Appropriations.

	1900.	1901.
Salaries of governor, etc	$31,000.00	$70,035.72
Contingent expenses of Territory	2,000.00	2,000.00
Salaries of surveyor-general, etc	3,800.00	10,300.00
Contingent expenses, office of surveyor-general	1,000.00	1,500.00
Traveling expenses of Territory	2,852.00	3,000.00
Rent, office of marshal	10,000.00	14,500.00
Education of children	30,000.00	30,000.00
Education of Indians	5,000.00	----------
Reindeer for Alaska	25,000.00	26,133.53
Supplies for native inhabitants	19,500.00	19,500.00
Refuge station at Point Barrow	106.67	----------
Salaries of agents at seal fisheries	12,950.00	12,950.00
Protection of salmon fisheries	7,000.00	7,000.00
Expenses of inspectors of pelagic seal skins	----------	110.00
Maps of Alaska	18.50	----------
Care and custody of insane	----------	356.21
Repairs and expenses of steamer Thetis	70,000.00	----------
Expenses of revenue vessels in Alaskan waters	132,800.00	188,500.00
Customs service*	52,367.79	58,245.89
Internal-revenue service*	3,850.00	3,650.00
Light-house service	----------	100,000.00
Expenses of United States courts*	55,700.00	339,500.00
Salaries and commissions, land offices*	3,000.00	5,200.00
Indian schools	7,000.00	7,000.00
	474,944.96	899,481.35

* Estimated.

In the foregoing statement the "estimated" amounts given are the approximate expenditures from general appropriations for the Alaskan service, as far as it is possible to separate them with the data on hand.

The item of "Expenses of United States courts" for 1901 includes receipts by judicial officers which are disbursed directly by them under the provisions of the act of June 6, 1900, section 7 (31 Stat., 324), without being covered into the Treasury, and which do not appear in the following statement of receipts.

Receipts.

	1900.	1901.
From customs	857,623.62	886,593.15
From internal revenue	13,601.96	19,725.02
From sales of public lands	2,376.32	1,889.66
From tax on seal skins	224,476.47	229,755.75
From rent of islands for propagating foxes	1,200.00	2,900.00
From license fees and fines	157,234.94	147,255.33
	456,513.31	488,118.91

For the fiscal year 1900 the license fees were deposited in the Treasury in one sum without subdivision, no separate data thereon being furnished. For the fiscal year 1901 the fees and costs, fines and penalties, and a portion of the license fees were deposited in one sum, amounting to $63,167.43; and the remainder of the license fees, amounting to $84,087.90, were separately covered into the Treasury. Correspondence with the clerk of the United States district court in Alaska established the fact that the information necessary to subdivide the first of the foregoing items for 1901 could not be obtained at that time.

For the fiscal year 1902 the receipts from licenses, fees and costs, fines, penalties, etc., are being covered into the Treasury under instructions of the honorable Attorney-General (see Supplemental Instructions to

Clerks of the District Court of Alaska, May 1, 1901) under separate heads, as follows:

1. "*License fees collected in incorporated towns*," being one-half of the total collections on this account, covered into the Treasury as provided in the act of March 3, 1899, 30 Stat., page 1336, the remaining 50 per cent of these collections being paid over to the treasurer of the corporation for school purposes, under the provisions of the acts of June 6, 1900, 31 Stat., page 521, section 203, and March 3, 1901, 31 Stat., page 1438.

2. "*License fees collected outside of incorporated towns*," being the full amount collected on this account, 50 per cent of which is appropriated and becomes available for school purposes outside of corporate limits, under the direction of the Secretary of the Interior, as provided in the act of March 3, 1901, 31 Stat., page 1438.

3. "*Funds other than license fees available for court expenses*," being the balance of the receipts of this class after the payment therefrom (before deposit is made) of certain court expenses authorized by the judge of the district court, covered into the Treasury under section 7 of the act of June 16, 1900, 31 Stat., page 324.

The receipts under these separate heads for the current fiscal year to date are as follows:

1. License fees collected in incorporated towns	$9,463.30
2. License fees collected outside of incorporated towns	20,822.16
3. Funds other than license fees available for court expenses	3,507.10

Respectfully,

M. E. AILES,
Assistant Secretary.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE ALASKAN LICENSE CASES.

A. W. CORBUS, APPELLANT, *v.* THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 10.
CHARLES STEWART, APPELLANT, *v.* THE WASHINGTON AND ALASKA STEAMSHIP COMPANY et al.	No. 13.
THE PACIFIC STEAM WHALING COMPANY, appellant, *v.* THE UNITED STATES.	No. 26.
THE PACIFIC COAST STEAMSHIP COMPANY, appellant, *v.* THE UNITED STATES.	Nos. 29, 30, and 31.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

POINTS MADE BY THE SOLICITOR-GENERAL.

THE QUESTIONS OF PROCEDURE.

The theory of the other side is that these license taxes collected in Alaska are general taxes; that they are levied for the benefit of the United States, and since they are not uniform throughout the United

States they are unconstitutional. If they are general taxes, I submit that a proper method of procedure has not been used to test their constitutionality.

In two of the cases suits were brought by stockholders to restrain certain corporations from applying for licenses and paying the fees required. In the other so-called cases no suits were instituted and no cases exist.

The two suits brought by stockholders were based upon the decision in the Pollock case. But in that case the trust company held in a fiduciary capacity moneys belonging to many corporations and individuals, and if it had paid the tax against their protest, it might have been subjected to a multiplicity of suits. Moreover, the Government did not press any objections to the method of procedure. So far as it could, the Government waived the point. There were members of the court who did not waive the objection, but vigorously dissented, and I refer the court to what they said.

It is to be observed that in the two cases here, the corporations did not occupy any such fiduciary relation, and the method used is simply an indirect way of bringing a suit to restrain the collection of a tax, which the statute and the policy of the United States prohibit.

An individual applying for a license could not bring a suit of this sort. And yet a corporation engaged in the same business, by this indirect method, avoids the prohibition of the law. The method adopted is clearly one that violates a wise public policy, and I strenuously object to it. If the court should sustain its

propriety in these cases, there is no case in which a corporation can not restrain the collection of a tax.

The second set of so-called cases are, I submit, not cases at all. They are simply applications for licenses accompanied by protests. In the application is incorporated a protest because the law is unconstitutional, and a prayer that the court will determine it to be so. No one was sued, no one was made a party, no one was called upon to defend. It is true the district attorney was notified, and appeared as amicus curiae, but he was not called upon to do so in the discharge of his duty as United States attorney, and might well have remained away.

In applying for a license there was no call made upon the court to act in a judicial capacity. The law might have provided that the license should be issued by the clerk or by any officer of the district in Alaska. The court in determining whether the license should be granted acted in an administrative and not a judicial capacity. Of course, administrative officers in issuing licenses and in levying taxes exercise quasi judicial powers, using discretion and judgment in determining the questions presented to them; but that is not the exercise of a judicial function. It was the duty of the court to keep its administrative separate from its judicial duties. It properly refused to mingle and confuse these separate and distinct functions.

It is to be observed that this method of application and protest, calling upon the court to pass upon the constitutionality of a law, was only another way of

attempting to restrain the collection of the license tax; for, if the court had upon this application determined the law to be unconstitutional, it would have refused to receive the fee and therefore restrained the collection of the tax.

As to the remedy open to these corporations, I suggest they could have made their application and paid the fee under protest, and then have sued the clerk, who was ex officio treasurer of the district, to recover back the sums of money thus paid, at the same time, if they deemed it necessary, applying for an injunction to restrain him from covering the fees into the Treasury of the United States. (See *Ashley* v. *Ryan*, 153 U. S., 436.)

LEGISLATIVE HISTORY.

Alaska was ceded to the United States by the treaty of June 20, 1867. (15 Stat. L., 539; see Appendix.) Before that time it had been occupied and arbitrarily governed by a fur-trading Russian corporation, known as the Russian-American Company. (*Kinkead* v. *United States*, 150 U. S., 483, 490; see Appendix.)

On July 27, 1868 (15 Stat. L., 240; see Appendix), the laws of the United States relating to customs, commerce, and navigation, so far as applicable, were extended to and over Alaska, and the territory was constituted a customs collection district, with a port of entry at or near Sitka. By section 4 the President was authorized to prohibit the importation and use of firearms, ammunition, and distilled spirits in and within Alaska. The power given him was of the broadest character, authorizing the seizure and forfeiture of all

such commodities exported from any part of the United States and destined for Alaska, as well as the seizure and forfeiture of the vessel conveying them. The taking of fur-bearing animals was prohibited and violations of law were to be prosecuted in the United States courts for Oregon, California, or Washington.

By the act of July 1, 1870 (16 Stat. L., 180), provisions were made to prevent the extermination of fur-bearing animals in Alaska. A limitation was placed upon the number of seals which might be killed for their skins upon the islands of St. Paul and St. George. The right to take fur skins there was to be leased and an annual rental paid for the privilege. And it was also provided that in addition to the rental "a revenue tax or duty of $2 is hereby laid on each fur seal skin taken and shipped from said islands during the continuance of such lease, to be paid into the Treasury of the United States." The major part of the revenue collected in Alaska has come from this source, the annual receipts amounting to over $225,000.

Thus the matter remained until the passage of the act of May 17, 1884 (23 Stat. L., 24; see Appendix), which, for the first time provided any system of government for Alaska. The act of 1884 constituted Alaska a civil and judicial district (not a Territory), with a seat of government at Sitka. A governor was provided, charged with the interests of the United States arising in the district, with authority to see that the laws are enforced, to whom was given power to grant reprieves pending the action of the President. A dis-

trict court was established, with civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction as might be established by law. Two terms of court each year were provided and the judge was given authority to make allowances for the necessary expenses of his court. Four commissioners were provided with the civil and criminal jurisdiction of justices of the peace in Oregon, also with testamentary and probate jurisdiction, and with authority to grant writs of habeas corpus returnable before the judge Fines and forfeitures received by them were to be paid over to the clerk of the district court. A marshal was provided with authority to appoint four deputies with not only the duties of deputy United States marshals, but those of constables under the laws of Oregon.

The general laws of Oregon were made the law of the district so far as applicable. Writs of error in criminal cases were to issue to the United States circuit court for Oregon.

The provision of this act to which special attention should be directed is that contained in section 4, which provided:

> That a clerk shall be appointed for said court *who shall be ex officio secretary and treasurer of said district.* * * * The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. *He shall also receive all moneys collected from fines, forfeitures, or in any other manner* except from violations of the customs laws, *and shall apply the same to the incidental expenses of the said district*

court and the allowances thereof, as directed by the judge of said court, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury.

Thus the clerk was made the treasurer of Alaska. All moneys collected there were to be turned over to him, and he was given authority to apply them to the incidental expenses of the court—the court which, it is to be observed, provided, with its officers, practically all the machinery of government in force in Alaska.

While it is true that under the provisions of the act of May 14, 1898 (30 Stat. L., 409), the homestead laws were extended to Alaska and provisions made for the granting of rights of way for railroads, wagon roads, and tramways, as well as for the purchase of land and timber upon certain conditions, the machinery of government provided by the act of 1884 remained in force at the time of the passage of the act of March 3, 1899 (30 Stat. L., 1253—see Appendix), "To define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district." Alaska had no Territorial form of government, no legislature of its own, no treasury of its own, no revenue of its own, no appropriations of its own. Practically it was governed by the court; its only treasurer was the clerk of the court; its only local revenues the moneys paid to the clerk as treasurer; and substantially its only appropriations the authority on the part of the clerk to pay out of these receipts the incidental expenses of the court.

I particularly call attention to the fact that the local expenses of Alaska, expenses provided for in organized Territories by local taxation, were neither borne by Alaska itself or specially appropriated for by Congress, but were met by the different departments of the Government through the use of general appropriations expended by agents located in Alaska.

In 1897 and 1898 the great rush to Alaska and the Klondike began. Adventurous men from all parts of this country and of the world hurried there. Not simply the hardy and daring, but the reckless and lawless were attracted. The law prohibiting the importation and use of liquor became a dead letter. Many occupations were used for purposes of fraud and extortion. There was a pressing need of regulation and supervision. Legislation was imperatively demanded. As a result, the formulation of not only a criminal but a civil code was begun.

SOURCE OF CONGRESSIONAL POWER.

The criminal code was finished first. As opposing counsel has stated, after that code had been introduced in Congress it was amended by inserting the provisions contained in sections 460 et seq., licensing certain lines of business, for the purpose of regulating these occupations and at the same time of raising revenue to meet the extraordinary increase of local expenses. The criminal code was enacted under the power vested in Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States." (Art. IV, sec. 3, par. 2.) Under

this Territorial grant Congress has the entire dominion and sovereignty, national and municipal, Federal and State, over the Territories. (*Shively* v. *Bowlby*, 152 U. S., 1.) Congress may do for them "what the people under the Constitution of the United States may do for the States." (*National Bank* v. *Yankton*, 101 U. S., 129.)

Congress therefore had power both to regulate and to tax, and it provided these licenses for both purposes. Both regulation and revenue were needed, and both were provided. It is not necessary, indeed it is impracticable, to dissect the law and distinguish the purposes. Regulation and revenue went together. We can not separate them.

THE LICENSES WERE LOCAL.

The pertinent parts of the act are printed in the Appendix. They obviously provide for local licenses. Such licenses could not be provided except under the power to regulate occupations within the territory affected. Certain occupations are selected for regulation.

Section 460 provides that any person or persons, corporation or company, prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska *shall first apply for and obtain license* so to do from a district court or a subdivision thereof in said district.

Section 463 provides that the license shall be issued by the clerk * * * in compliance with the order of the court * * *; and the clerk shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of the licenses and of the action of the court thereon.

Here are clear provisions for an application to the court, the consideration by the court of recommendations for and remonstrances against the granting of the license, and for the action of the court either granting or denying the permit desired. The court is given the power either to permit or refuse authority to carry on the lines of business covered by the act.

THE LICENSE-TAX CASES.

The distinction between a license which grants authority to engage in a particular business, and thus confers a privilege, and a tax which grants no such authority, and therefore confers no privilege, was clearly drawn in the *License-Tax Cases* (5 Wall., 462), wherein the court held that the so-called license tax imposed by the United States upon the liquor business did not provide a license, but merely a tax collected in the form of a license. The court pointed out that the license issued by the General Government conferred no authority to engage in the liquor business in the several States, because Congress had no power to regulate occupations carried on within the States. The court, speaking by Chief Justice Chase, said (p. 470):

> It is not doubted that where Congress possesses constitutional power to regulate trade or intercourse it may regulate by means of licenses as well as in other modes; and, in case of such regulation, a license will give to the licensee authority to do whatever is authorized by its terms.
>
> Thus Congress having power to regulate commerce with foreign nations and among the

several States and with the Indian tribes, may, without doubt, provide for granting coasting licenses, licenses to pilots, licenses to trade with the Indians, and any other license necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.

But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.

The court therefore reached the following conclusion (p. 471):

> But it is not necessary to regard these laws as giving such authority. So far as they relate to trade within State limits they give none, and can give none. * * * The granting of a license, therefore, must be regarded as nothing more than a mere form of imposing a tax, and of implying nothing except that the licensee shall be subject to no penalties under national law if he pays it.

CONGRESS COULD NOT MAKE THESE LICENSES UNIFORM THROUGHOUT THE UNITED STATES.

These are clearly licenses, and therefore clearly local. In granting them the court must consider local conditions, and grant or refuse in view of such conditions. Now, the objection on the other side is that these license taxes are not uniform throughout the United States. But how could Congress make such local regulations uniform throughout the United States? How could Congress provide that all these occupations should also be licensed throughout the United States, in all the States? It would not only be impracticable, but clearly violative of the Constitution. Such occupations can be regulated and licensed within the States only by the States themselves.

THE REVENUE FEATURE.

Passing to the revenue feature, it is asserted that so much money is raised that the measure must be regarded as one for revenue only. In this connection let me refer to what the supreme court of Ohio said in two leading cases on the subject of license taxes. In each of these cases the license tax was assailed on the ground that it violated the uniformity clause of the Constitution, in that it was a tax for general revenue and was not uniform. Respecting the power and policy of licensing certain occupations, Judge Gholson, in the case of *Baker* v. *Cincinnati* (11 Ohio St., 534), said (p. 543):

> We think that the power to prohibit certain things to be done, unless a license be obtained, and to charge for such license, in many instances

of its exercise, stands on the same principle as an assessment An assessment stands on a principle of benefit to property: a charge for a license may be made in view of the special inconvenience and expense to the government, for the benefit of the individual who asks for the license. Things licensed may be such as should only be permitted under the regulation or supervision of public functionaries. The tax or charge may have reference to such regulation and supervision * * * *To say that it is a tax and goes into the public treasury does not disprove this object.*

And in *Marmet* v. *State* (45 Ohio St., 63), Judge Spear said (p. 70):

Whether the authority to enact laws of the character of the one in question shall be regarded as based upon the police power of the Government, or upon the taxing power, is, perhaps, not of the greatest importance, provided the power is found to exist. We have the best of authority for the oft-repeated aphorism "there is no magic in names." The enactment provides for the regulation of relative rights, privileges and duties as between individuals, for the conservation of order and the discouragement of pernicious employments, or of such as may become so, thus keeping its object appparently within the attributes of police power (Cooley on Taxation, 586): but we need not concern ourselves with nice and finely drawn distinctions. Both the police and the taxing power, including power of assessment, are included within the general legislative power vested by our constitution in the general assembly.

In the case of *Wiggins Ferry Co.* v. *East St. Louis* (107 U. S., 365), this court, speaking by Mr. Justice Woods, said (p. 373):

> *The power to license is a police power, although it may also be exercised for the purposes of raising revenue.* We can not say, as a matter of law, that when a municipal corporation is authorized "to regulate, tax, and license ferryboats" the imposition of a license fee of $100 per boat is not within the power to regulate and license, and is consequently not within the police power.

Again (p. 375):

> The power of the State of Illinois to authorize any city within her limits to impose a license tax on trades or callings generally, especially those which are quasi public, can not be disputed. * * * *Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists.*

IT WAS FOR CONGRESS TO DETERMINE THE AMOUNT OF THE FEE REQUIRED FOR REGULATION.

Opposing counsel contends that more money was required to be paid than was necessary for purposes of regulation. How is the court to determine the question thus raised? In imposing a license tax for regulative purposes, many things must be considered. It may be desirable to put the tax so high as virtually to prohibit the occupation; or to place it at a figure which will localize the business, make it easy of supervision, or restrict it to persons of a certain degree of responsibility; or to put it at a figure which, while not unreasonably limiting the occupation, will confer a privilege for which

a price is charged; or put it at a figure which will repay the Government for the special burdens placed upon the State by reason of the business. These are some of the considerations. How can the court review or revise the action of Congress in fixing a schedule of rates which would result in proper regulation along with sufficient revenue? Each line of business involved in these cases is a proper subject of a license tax.

The liquor business, which is practically everywhere licensed.

The business of salmon canneries, a peculiarly proper subject of regulation in Alaska, in view of the public money spent on the salmon fisheries.

The business of inland water transportation, a quasi public occupation, suitable for supervision.

The mercantile business, which in an unorganized society ought especially to be regulated so as not to be made a means of swindling and extortion.

The tax on quartz mills. What could be more reasonable and just than a tax of $3 per stamp per year on these great stamp mills, which depend for their profit upon the mining interest in Alaska, upon which the Government has expended and is expending immense sums of money?

If the court will examine the list of occupations licensed, it will see that they are such as are usually licensed elsewhere, with the addition of certain ones peculiarly proper for supervision in Alaska. I refer the court especially to the District of Columbia license law.

THE DISPOSITION OF THE LICENSE FEES.

The strong point urged against the license law is that the moneys received are turned into the Treasury. Why this was done, and the effect of it, I shall discuss later. At the threshold I submit, however, for the consideration of the court, where is there any provision in the Constitution prohibiting Congress from covering into the Treasury the proceeds of a local tax which Congress has levied, not under the general power of taxation, but under its power of local Territorial regulation? Congress is given power "to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." The Territory referred to is regarded as property of the United States. Congress has power either to dispose of it as property or regulate it as it may consider needful. If such regulation results in revenue, why may not Congress cover such revenue into the general Treasury? Congress has power to levy taxes, uniform throughout the United States, and apply the proceeds to the benefit of any territory belonging to the United States.

It is not considered that such use of money collected from the people of all the States is unfair, because the particular territory benefited belongs to all the United States. Why should the reverse of the proposition be regarded as unfair? The people of all the States spend their money for the benefit of a particular territory. What is there in the Constitution to prevent them from regulating trade within that territory so as to reimburse themselves for what they are out of pocket? Since

1870 Congress has recouped itself, as far as it could, by the tax of $2 on each seal skin taken. Was this unconstitutional? If not, why not? No liquor can be sold in Alaska, no railroad run, no local steamship lines operated, no salmon caught or salmon canneries conducted, no mines opened or operated, and, in short, none of the lines of business mentioned in this license law conducted within Alaska except by permission of Congress. Each man who runs such a business enjoys a privilege conferred by Congress, for which he pays a price. What stands in the way of Congress using this price for the general benefit, since the General Government conferred the privilege?

Upon the point that the disposition of the proceeds of a tax does not determine conclusively whether the tax is general or local, let me quote the language of Chief Justice Fuller in his dissenting opinion in *Downes* v. *Bidwell* (182 U. S., 244, 355):

> The fact that the proceeds are devoted by the act to the use of the Territory does not make national taxes local. Nobody disputes the power of Congress to lay and collect duties, geographically uniform, and apply the proceeds by a proper appropriation act to the relief of a particular Territory, but the destination of the proceeds would not change the source of the power to lay and collect. And that suggestion certainly is not strengthened when based on the diversion of duties collected from all parts of the United States to a Territorial treasury before reaching the Treasury of the United States.

> Clause 7 of section 9 of Article I provides that "no money shall be drawn from the Treasury but in consequence of appropriation made by law," and the proposition that this may be rendered inapplicable if the money is not permitted to be paid in so as to be susceptible of being drawn out is somewhat startling.

Further upon this point I call the attention of the court to the language of Judge Spear in the leading case of *Marmet* v. *State* (45 Ohio St., 63, 68), in which it was insisted that covering moneys collected from licenses into the general fund made the tax a general one:

> The last-named section by no means exhausts the taxing power. The provision in section 38 that all moneys received from licenses upon vehicles shall be placed to the credit of the street-repairing fund would seem to refute the claim that the money from this source is raised for general revenue, *although it would not necessarily follow, even if it were required to be placed to the credit of the general fund, that the purpose of the law was exclusively the raising of general revenue, because no impediment exists to placing in one fund moneys intended for different purposes.* So other moneys arising from licenses, though required to be placed to the credit of the general fund, do not by reason of that fact become general revenue.

But, passing this phase of the discussion as a suggestion merely, I come to what was actually done. At the time the license law of 1899 was passed the clerk was the acting treasurer of the district of Alaska, under

the act of 1884. That act empowered him to use all local revenues to pay the incidental expenses of the court. The receipts from licenses were evidently turned over to him, because they were local revenues and he the local treasurer. Evidently, in inserting the provision for the covering of these receipts into the Treasury of the United States, Congress lost sight of the fact that the law of 1884 empowered him to use such collections to pay the incidental expenses of the court, or possibly Congress may have intended him to use this power which he had and only cover into the Treasury the balance remaining. Color to this view is given by the fact that the next year, in 1900, when the civil code was enacted and local machinery of government provided, there was continued in the section defining the powers and duties of the clerk this provision, restated in this form (sec. 7), that—

> He [*the clerk*] *shall also receive all moneys collected from licenses*, fines, forfeitures, or in any other case, except from violations of the customs laws, *and shall apply the same to the incidental expenses* of the proper division *of the district court* and the allowance thereof as directed by the judge, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury.

In this connection I may say that since 1900 by far the larger portion of the receipts from licenses have been applied to the incidental expenses of the courts. The court expenses in Alaska, on account of the great

distances traveled by witnesses, are enormous, and to meet them a large local fund must be accessible. I happen to know from official reports made to the Department of Justice that in the Hardy case a number of witnesses were paid $600 each for mileage alone.

DIVERSION OF LICENSE FEES TO SCHOOL PURPOSES.

And at this point it may be well to call attention to the fact that in the civil code, enacted in 1900, under the chapter providing for the incorporation of certain towns, it was enacted that 50 per cent of the moneys collected from licenses in such towns should be turned over to the town treasurer for use for school purposes (31 Stat. L., 521—see Appendix). And the next year, 1901, this section was amended so as to provide that if the 50 per cent of the license fees were not needed for school purposes in the municipality the balance might be expended for general municipal purposes (31 Stat. L., 1438—see Appendix). And in this amendment there was included a further provision that 50 per cent of all license fees collected outside of incorporated towns should be turned into the Treasury of the United States and placed at the disposal of the Secretary of the Interior for use for school purposes in Alaska outside of incorporated towns.

POSITION OF THE GOVERNMENT.

But, as I have said, the act of 1899 omitted these provisions for the use in Alaska of the moneys received for licenses, and simply provided that they should be

paid over to the clerk of the court and by him "covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe."

Answering the argument of the other side that moneys covered into the Treasury of the United States must be regarded as used for the benefit of the United States generally, I contend—

In the first place, that Congress, having paid all the expenses of Alaska, local as well as general, had a right to reimburse itself by requiring that local revenues collected and held by the local treasurer should be covered into the Treasury of the United States. This is no more than is being done right along in the case of the District of Columbia. Congress, in its appropriation bills for the District, advances the money to pay all the expenses of the District, in anticipation of the collection of the local revenues. When such collections are made they are turned into the Treasury of the United States, at first to the credit of the District fund and afterwards by a general warrant covered into the General Treasury. (31 Stat. L., 766; 32 Stat. L., 616.) In some cases the moneys collected in the District are covered directly into the Treasury to the credit of the general fund. But whatever method is followed, it is simply a case of recouping or reimbursing the Treasury; and this is all that was done in the case of Alaska.

In the second place, I submit that because local revenues are covered into the General Treasury it does not follow that they are necessarily devoted to general purposes. It may be that the only way to use them

for local purposes is to turn them into the General Treasury. Moneys in the General Treasury may be expended either for the benefit of the United States generally or for the benefit of some particular Territory belonging to the United States. If expended for the latter purpose, then they are expended for a local benefit. Now, in the case of Alaska substantially all the expenses of the government of that district were being borne by the General Government through general appropriations. In order to contribute toward bearing these local expenses it was necessary for the local collections to be turned into the General Treasury. The agencies of the General Government operating in Alaska and paid out of general appropriations had to meet the various local requirements. In this way, indirect, but still the only available way at that time, the local collections were used by the General Government for local purposes.

The Constitution itself provides a method of ascertaining from time to time what is being done in the way of collecting and expending public moneys, for it provides (Art. I, sec. 9, par. 7) that no money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Subsequently, when the act of 1900 had provided local machinery of government, provision was made for diverting the license fees, in the manner I have already described, and expending them for local purposes without turning them into the Treasury of the United States.

CONCLUSION.

I have had made by the officers of the Treasury (see Appendix) statements of the amount of money collected in Alaska and of the amounts expended for its benefit. These amounts, for the most part, have been picked out of the general appropriations.

It appears from these that the appropriations for the fiscal year ending June 30, 1900, amounted to $474,944.96; for the fiscal year ending June 30, 1901, $899,481.35; for the fiscal year ending June 30, 1902, $966,516.25, and for the fiscal year ending June 30, 1903, $957,335.76.

The collections for 1900 amounted to $456,513.31; for 1901, $488,118.91; for 1902, $431,106.73, and for the first quarter of 1903, $89,196.36.

The collections from the tax on seal skins amounted for the year 1900 to $224,476.47; for 1901, $229,755.75, and for the year 1902, $231,821.20.

I have also had prepared a statement for the fiscal year ending June 30, 1902, which shows by judicial divisions the receipts, disbursements, and deposits of public money by the clerks of the United States court. (See Appendix.)

The receipts from liquor licenses amounted to $168,149.92, while the licenses from all other occupations brought in $117,585.45. Of this there was disbursed for the incidental expenses of the court $112,373.91, and to treasurers of incorporated towns for school purposes $66,963.59; while there was deposited in the Treasury $95,966.94, of which there was

available for school purposes, to be expended by the Secretary of the Interior outside incorporated towns, $31,559.65.

I print in the Appendix a discussion in detail of the questions of procedure raised.

JOHN K. RICHARDS,
Solicitor-General.

DECEMBER 12, 1902.

APPENDIX.

ALASKA BEFORE THE TREATY.

Kinkead v. *United States*, 150 U. S., 483. Mr. Justice Brown said in this case, respecting the government of Alaska (p. 490):

> It appeared that the territory of Alaska had, prior to its cession to the United States, been occupied by a Russian corporation known as the Russian-American Company, a corporation largely engaged in fur trading. This company had the privilege of making use of the public lands and erecting buildings thereon. It had no right, however, of becoming the owner of such lands, but did have the privilege of conveying parcels of it in fee simple to its employees. Pursuant to this privilege, it had made conveyance of certain of these lands to its employees, upon which had been constructed the dwellings erected by the company and occupied by such employees, their widows or children. Apparently, however, it had no right to acquire for itself any title to the soil, and enjoyed nothing more than the use of the land upon which its buildings were situated, the dominion or right of property therein remaining in the Russian Government. The company appears to have possessed not only the ordinary powers of a trading corporation, but certain governmental powers, which it exercised arbitrarily, if not despotically, over the entire territory. It had a monopoly of the trade of the territory, and appears to have been in fact a provincial government of the Russian Empire.

THE ALASKA TREATY OF JUNE 20, 1867 (15 STAT., 539).

By the first article His Majesty the Emperor of all the Russias agrees to cede to the United States all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within certain geographical limits set forth in the article.

By the second article there are included in this cession of territory and dominion the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property.

Property belonging to the Greek Oriental Church was excluded from the cession. Government archives relative to the territory and dominion are to be left in the possession of the United States, but another copy is to be furnished to the Russian Government.

The third article provided:

> The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

By the fourth article provisions are made for the formal delivery of the territory; but it is provided that the cession, with the right to immediate possession, is

nevertheless to be deemed complete and absolute on the exchange of ratifications.

Article V provides for the delivery of the fortifications or military posts and for the withdrawal of Russian troops.

By the sixth article the United States agrees to pay, within ten months after the exchange of the ratifications, $7,200,000 in gold.

> The cession of territory and dominion herein made is hereby declared to be free and unencumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.

ACT OF JULY 27, 1868 (15 STAT. L., 240).

By the act of July 27, 1868 (15 Stat. L., 240), the laws of the United States relating to customs, commerce, and navigation, so far as applicable, were extended to and over Alaska (sec. 1). All of this territory was constituted a customs collection district, with a port of entry to be established at or near Sitka (2). The Secretary of the Treasury was authorized to make regulations for the naturalization of vessels owned by residents of Alaska at the time of its cession (3). The President was given power to regulate or prohibit the importation and use of firearms, ammunition, and distilled spirits, as follows:

> SEC. 4. That the President shall have power to restrict and regulate or to prohibit the importation and use of firearms, ammunition, and distilled spirits into and within the said Territory

> And the exportation of the same from any other port or place in the United States when destined to any port or place in the said Territory, and all such arms, ammunition, and distilled spirits exported, or attempted to be exported, from any port or place in the United States and destined for such Territory, in violation of any regulation that may be prescribed under this section; and all such arms, ammunition, and distilled spirits, landed or attempted to be landed or used at any port or place in said Territory, in violation of said regulations, shall be forfeited; and if the value of the same shall exceed four hundred dollars, the vessel upon which the same shall be found, or from which they shall have been landed, together with her tackle, apparel and furniture, and cargo, shall be forfeited; and any person wilfully violating such regulation shall, on conviction, be fined in any sum not exceeding five hundred dollars or imprisoned not more than six months. And bonds may be required for a faithful observance of such regulations from the master or owners of any vessel departing from any port in the United States having on board firearms, ammunition, or distilled spirits, when such vessel is destined to any place in said Territory, or if not so destined, when there shall be reasonable ground of suspicion that such articles are intended to be landed therein in violation of law; and similar bonds may also be required on the landing of any such articles in the said Territory from the person to whom the same may be consigned.

The coasting trade between Alaska "and any other portion of the United States" was to be regulated according to the laws of the United States (5). The killing of fur-bearing animals was prohibited (6). Violations of law were to be prosecuted in the United States courts in Oregon, California, or Washington (7). The

Secretary of the Treasury may prescribe regulations for carrying into effect this act, except the provisions intrusted to the President alone.

ACT OF MAY 17, 1884 (23 ST., 24).

The act of May 17, 1884 (23 St., 24), constituted Alaska a civil and judicial district, with the seat of government at Sitka (1). A governor was provided, charged with the interests of the United States Government arising within the district, with authority to see that the laws are enforced. Power was given him to grant reprieves pending the decision of the President (2). A district court was established, with civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction as may be established by law. Two terms of the court each year, one at Sitka and the other at Wrangel, were provided. The judge was given authority "to make allowances for necessary expenses of his court" (3).

> SEC. 4. That a clerk shall be appointed for said court, *who shall be ex officio secretary and treasurer of said district*, a district attorney, and a marshal, all of whom shall during their terms of office reside therein. The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. *He shall also receive all moneys collected from fines, forfeitures, or in any other manner except from violations of the custom laws, and shall apply the same to the incidental expenses of the said district court* and the allowances thereof, as directed by the judge of said court, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury.

By section 5 four commissioners were provided, with the civil and criminal jurisdiction of justices of the peace

in Oregon. They were also given jurisdiction in testamentary and probate matters. They were also given power to grant writs of habeas corpus, returnable before the district judge. They had powers of notaries public. Fines and forfeitures collected by them were to be paid over to the clerk. Four marshals were provided for, with authority of United States marshals and powers and duties of constables under the laws of Oregon (6). The general laws of Oregon were made the laws of the district, so far as applicable. Writs of error in criminal cases were to issue to the United States circuit court of Oregon. Final judgments were reviewable by the Supreme Court of the United States (7).

Alaska was created a land district, with certain special provisions (8). The salaries and fees of various officers were established and it was provided that the laws of the United States not locally inapplicable should be extended to the district, but there should be no legislative assembly nor any Delegate (9).

ACT MAY 14, 1898 (30 STAT., 409).

The act of May 14, 1898 (30 Stat., 409), provides for the extension of the homestead laws to Alaska, and for the granting of right of way through the lands of the United States in that district to any railroad company upon certain conditions. Rates and fares in Alaska are to be printed and posted as required by the interstate-commerce act, and are subject to revision and modification by the Secretary of the Interior (sec. 2). The act also contains provisions for the grant of rights of way for wagon roads and tramways (sec. 6). Provisions are made for the purchase of Government land by residents upon certain terms (sec. 10). Also for the sale of timber (sec. 11). The privilege of entering

goods in bond, and of withdrawing them for exportation to Canada, is granted to the government of Canada and its citizens.

ACT OF MARCH 3, 1899 (30 STAT., 1253).

The act of March 3, 1899, to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district (30 Stat., 1253):

> SEC. 460 (p. 1336). That any person or persons, corporation, or company, *prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain license* so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:
>
> Abstract offices, fifty dollars per annum.
>
> Banks, two hundred and fifty dollars per annum.
>
> Boarding houses having accommodations for ten or more guests, twenty-five dollars per annum.
>
> Brokers (money, bill, note, and stock), one hundred dollars per annum.
>
> Billiard rooms, twenty-five dollars per table per annum.
>
> Bowling alleys, twenty-five dollars per annum.
>
> Breweries, five hundred dollars per annum.
>
> Bottling works, two hundred dollars per annum.
>
> Cigar manufacturers, twenty-five dollars per annum.
>
> Cigar store or stand, twenty-five dollars per annum.
>
> Drug stores, fifty dollars per annum.
>
> Public docks, wharves, and warehouses, one hundred dollars per annum.
>
> Electric-light plants, furnishing light or power for sale, three hundred dollars per annum.

Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

Freight and passenger transportation lines, propelled by mechanical power on inland waters, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

Gas plants, for heat or light for sale, three hundred dollars per annum.

Hotels, fifty dollars per annum.

Halls, public, ten dollars per annum.

Insurance agents and brokers, twenty-five dollars per annum.

Jewelers, twenty-five dollars per annum.

Mines: Quartz mills, three dollars per stamp per year.

Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum, doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five pollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

Meat markets, twenty dollars per annum.

Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

Physicians, itinerant, fifty dollars per annum.

Planing mills, fifty dollars per annum when not part of a sawmill.

Pawnbrokers, three hundred dollars per annum.

Peddlers, twenty-five dollars per annum.

Patent medicine venders (not regular druggists), fifty dollars per annum.

Railroads, one hundred dollars per mile per annum on each mile operated.

Restaurants, twenty-five dollars per annum.

Real estate dealers and brokers, fifty dollars per annum.

Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, one dollar per ton per annum, on net tonnage, custom-house measurement of each vessel.

Sawmills, ten cents per thousand feet on the lumber sawed.

Steam ferries, one hundred dollars per year.

Toll road or trail, two hundred dollars per annum.

Tobacconists, twenty-five dollars per annum.

Tramways, ten dollars for each mile or fraction thereof per annum.

Transfer companies, fifty dollars per annum.

Taxidermists, twenty dollars per annum.

Theaters, one hundred dollars per annum.

Waterworks furnishing water for sale, fifty dollars per annum.

SEC. 463 (p. 1337). That the licenses provided for in this act shall be issued by the clerk of the district court, or any subdivision thereof, in compliance with the order of the court or judge thereof duly made and entered; and *the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon.* The clerk of the court shall be entitled to receive from each applicant for a license a fee of five dollars, and no other or additional compensation shall be paid such clerk for his services in connection with such license or the issue thereof: *And pro-*

vided, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and *all moneys received for licenses by him or them under this act shall be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe.*

SEC. 468 (p. 1339). That the liquor licenses authorized and provided for by this act shall be of two classes—wholesale liquor licenses and barroom licenses. Every applicant for a liquor license shall deposit the amount of the license fee with the clerk of the court at the time of filing his application for the license. If, upon consideration of the application for license by the court as provided for in this act, the court should determine to grant the license prayed for, it shall notify the clerk and the applicant for such license in writing and the applicant shall thereupon receive his license. The fee for a wholesale license shall be two thousand dollars per annum and for a barroom or retail license in towns or settlements of one thousand five hundred population or upward one thousand five hundred dollars per annum; in towns, camps, or settlements of more than one thousand and less than one thousand five hundred population, one thousand dollars per annum.

* * * * *

SEC. 476 (p. 1340). That all applicants who have had a license during the preceding year shall apply for a renewal of such license on or before November first of each license year, and shall be permitted to continue business until license shall be granted or refused by the court or judge thereof; but in all cases of refusal to grant license such proportion of the license fee as

may have become due shall be deducted and retained from the sum deposited therefor as the time from the first day of November to the date of such refusal bears to the entire license year, and no other person shall be permitted to conduct said business until a license is issued therefor.

SEC. 477. That nothing in this act shall in any way repeal, conflict, or interfere with the public general laws of the United States imposing taxes on the manufacture and sale of intoxicating liquors for the purpose of revenue and known as the "internal-revenue laws."

SEC. 480. That the provisions of this act shall take effect and be in force on and after the first day of July, anno Domini eighteen hundred and ninety-nine.

ACT OF JUNE 6, 1900 (31 STAT., 321).

The act of June 6, 1900, making further provision for a civil government for Alaska, and for other purposes. [31 Stat., 321.]

SEC. 7 (p. 324). * * * He (the clerk) *shall also receive all moneys collected from licenses, fines, forfeitures, or in any other case*, except from violations of the customs laws, *and shall apply the same to the incidental expenses of the proper division of the district court* and the allowance thereof as directed by the judge, and shall account for the same in detail and for any balances on account thereof quarterly to and under the direction of the Secretary of the Treasury. He shall be ex officio recorder of instruments, as hereinafter provided, and also register of wills for the district, and shall establish secure offices where terms of his division of the court are held for the safekeeping of his official records.

SEC. 10 (p. 325). * * * Each clerk shall collect all money arising from the fees of his

office or on any other account authorized by law to be paid to or collected by him, and shall report the same and the disposition thereof in detail, under oath, quarterly, or more frequently if required, to the court, the Attorney-General, and the Secretary of the Treasury, and *all public money received by him* and his deputies for fees or *on any other account shall be paid out by the clerk* on the order of the court, duly made and signed by the judge, and *any balance remaining in his hands after all payments* ordered by the court shall have been made *shall be by him covered into the Treasury of the United States* at such times and under such rules and regulations as the Secretary of the Treasury may prescribe.

SEC. 29 (p. 330). *Provided*, That section four hundred and sixty, chapter forty-four, title two, of "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," be amended to read as follows:

* * * * *

Boarding houses having accommodations for ten or more guests, twenty-five dollars per annum (amended, fifteen dollars per annum).

* * * * *

Billiard rooms, twenty-five dollars per table per annum (amended, fifteen dollars per table per annum).

Bowling alleys, twenty-five dollars per annum (amended, fifteen dollars per annum).

* * * * *

Cigar store or stand, twenty-five dollars per annum (amended, cigar stores or stands, fifteen dollars per annum).

* * * * *

Public docks, wharves, and warehouses, one hundred dollars per annum (amended, ten cents per ton on freight handled or stored).

* * * * *

Freight and transportation lines, propelled by mechanical power on inland waters, one dollar per ton per annum on net tonnage, custom-house measurement of each vessel (amended, freight and passenger transportation lines, propelled by mechanical power, registered in the district of Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the district of Alaska, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel).

* * * * *

Meat markets, twenty dollars per annum. (Amended, fifteen dollars per annum.)

* * * * *

Restaurants, twenty-five dollars per annum. (Amended, fifteen dollars per annum.)

* * * * *

Ships and shipping: Ocean and coastwise vessels, doing local business for hire, plying in Alaskan waters, one dollar per ton per annum on net tonnage, custom-house measurement of each vessel. (Amended, after "Alaskan waters" insert words "registered in Alaska or not paying license or tax elsewhere.")

* * * * *

Tobacconists, twenty-five dollars per annum. (Amended, fifteen dollars per annum.)

* * * * *

Taxidermists, twenty dollars per annum. (Amended, ten dollars per annum.)

Section 463, chap. 44, title 2, of "An act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district" (30

Stat., 1337), amended by striking out and inserting certain passages, as follows:

> SEC. 463. That the licenses provided for in this act shall be issued by the clerk of the district court or any subdivision thereof in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon: *[The clerk of the court shall be entitled to receive from each applicant for a license a fee of five dollars, and no other or additional compensation shall be paid such clerk for his services in connection with such license or the issue thereof: And] *provided*, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and all moneys received for licenses by him or them under this act shall, **except as otherwise provided by law*, be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe. (See 31 Stat., 332.)

DIVERSION OF LICENSE MONEYS TO SCHOOL PURPOSES.

Chapter 21, incorporation of towns, Civil Code of Alaska (31 Stat., 521), sec. 203, respecting the duties of the treasurer of the corporation, provides—

> That fifty per cent of all license moneys provided for by act of Congress approved March third, eighteen hundred and ninety-nine, entitled "An act to define and punish crimes in the district of Alaska and to provide a code of criminal

*Matter in brackets stricken out. Matter italicized inserted.

procedure for said district," and any amendments made thereto, required to be paid by any resident, person, or corporation for business carried on within said corporation, shall be paid over by the clerk of the United States district court receiving the same to the treasurer of said corporation, upon taking his receipt therefor in duplicate, one of which duplicate receipts shall be forwarded to the Secretary of the Treasury of the United States by the clerk as a voucher in lieu of cash, and the other receipt shall be retained by the clerk. The money received by the treasurer of the corporation [from the clerk of the court for licenses] shall be used, under the direction of the council, for school purposes: *Provided*, That where it is made to appear to the satisfaction of the district court that the whole amount heretofore or hereafter received by the treasurer of the corporation from the clerk of the court is not required for school purposes, the court may, from time to time, by orders duly made and entered, with a statement of the facts upon which they are based, authorize the expenditure of the accumulated surplus, or any part thereof, for any of the municipal purposes enumerated in this chapter. Fifty per centum of all license moneys provided for by said act of Congress approved March third, eighteen hundred and ninety-nine, and any amendments made thereto, that may hereafter be paid for business carried on outside incorporated towns in the district of Alaska and covered into the Treasury of the United States, shall be set aside to be expended, so far as may be deemed necessary by the Secretary of the Interior, within his discretion and under his direction, for school purposes outside incorporated towns in said district of Alaska.

(The interlineation in brackets and all the proviso added by amendment: See act March 3, 1901, 31 Stat., 1438.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, November 29, 1902.

Hon. J. K. RICHARDS,
Solicitor-General, Department of Justice,
Washington, D. C.

SIR: Referring to your communication of the 24th instant, relative to the statement of appropriations for Alaska and of the revenues collected in the Territory for the years 1900 and 1901, furnished to the Department of Justice by Department letter of November 8, 1901,[a] and in reply to your request for an additional statement, bringing the information down to date, I submit the following:

Appropriations.	1902.	1903.
Salaries of governor, etc	$32,625.00	a 1,500.00
Contingent expenses of Territory	2,000.00	2,000.00
Salaries of surveyor-general, etc	8,020.00	8,140.00
Contingent expenses, office of surveyor-general	1,500.00	1,500.00
Traveling expenses of Territory	5,000.00	5,000.00
Rent, etc., office of marshal	10,660.00	10,660.50
Reindeer for Alaska	25,000.00	25,000.00
Supplies for native inhabitants	10,486.00	15,000.00
Salaries of agents at seal fisheries	12,950.00	12,950.00
Protection of salmon fisheries	7,035.00	7,035.00
Expenses, inspectors of pelagic seal skins	100.00	100.00
Care and custody of insane	8,218.76	925.76
Light-House Service	200,000.00	125,000.00
Internal-Revenue Service	2,210.00	2,700.00
Indian schools	7,000.00	7,000.00
Transportation of destitute miners and citizens	920.00	8,500.00
Schools outside of incorporated towns	35,882.41	a 50,000.00
Salaries and commissions, land offices	8,027.64	a 9,000.00
Expenses of revenue vessels in Alaskan waters	120,000.00	a 150,000.00
Customs service	a 97,292.13	a 95,000.00
Expenses of United States courts	a 78,000.00	a 100,000.00
	960,526.25	657,355.76

a Estimated.

[a] See appendix to Mr. Beck's brief.

In the foregoing statement the "estimated" amounts given are the approximate expenditures from general appropriations for the Alaskan service, as far as it is possible to separate them with the data on hand.

The items of "Expenses of United States courts" include receipts by judicial officers which were disbursed directly by them under the provisions of the act of June 6, 1900 (31 Stat., p. 324, sec. 7), without being covered into the Treasury, and do not appear in the receipts as stated below.

The expense of revenue vessels in Alaskan waters is estimated by the revenue-marine division on the basis of a five months' cruise in 1902 and six months in 1903.

Receipts.	1902.	First quarter 1903.
From customs	$12,602.17	$20,510.53
From internal revenue	28,281.17	85.06
From sales of public lands	5,829.95	190.00
From tax on seal skins	201,851.20	(a)
From rent of islands for propagating foxes	.....	100.00
License fees, balance of 1901 receipts	1,427.49	.....
License fees collected in incorporated towns	22,403.30	26,985.00
License fees collected outside of incorporated towns	77,804.22	24,510.26
Funds other than license fees available for court expenses	8,521.39	7,814.89
Funds not available for court expenses	3,173.53	.....
	131,100.73	89,196.34

a The revenues from this source are usually received and covered into the Treasury during the third quarter of the fiscal year.

The inclosure to your letter is herewith returned.

Respectfully.

M. E. Ailes,
Assistant Secretary.

Statement showing by judicial divisions the receipts, disbursements, and deposits of public moneys by the clerks of the United States court in the District of Alaska for the fiscal year ended June 30, 1902.

RECEIPTS.

1. For licenses in incorporated towns:			
(*a*) Wholesale liquor, barroom, and brewery—			
First division	$34,000.00		
Second division	75,025.01		
Third division	3,500.00		
Total		$112,525.01	
(*b*) Mercantile, hotels, canneries, etc.—			
First division	$15,708.62		
Second division	10,173.21		
Third division	470.00		
Total		26,351.83	
Total for licenses in incorporated towns			$138,876.84
2. For licenses outside incorporated towns:			
(*a*) Wholesale liquor, barroom, and brewery—			
First division	$21,000.00		
Second division	24,624.91		
Third division	10,000.00		
Total		55,624.91	
(*b*) Mercantile, hotels, canneries etc.—			
First division	$63,183.82		
Second division	27,154.84		
Third division	895.00		
Total		91,233.66	
Total for licenses outside incorporated towns			146,858.57
Total for wholesale liquor, barrooms, and breweries		$168,149.92	
Total for mercantile business, hotels, canneries, etc		117,585.49	
Total for licenses			285,735.41

3. For fees, fines, and forfeitures:			
First division		$8,317.25	
Second division		8,880.85	
Third division		2,814.89	
Total			$20,012.99
4. Funds not available for court expenses:			
First division		$492.55	
Second division		8,023.98	
Third division		0.00	
Total			8,516.53
Aggregate receipts			314,264.93

DISBURSEMENTS.

1. From moneys received for licenses in incorporated towns:			
(*a*) Paid to treasurers of incorporated towns—			
First division	$24,855.31		
Second division	40,880.78		
Third division	1,227.50		
Total		$66,963.59	
(*b*) For incidental expenses of court—			
First division	$3,793.31		
Second division	47,202.63		
Third division	0.00		
Total		50,995.94	
2. From moneys received for licenses outside incorporated towns for incidental expenses of court:			
First division	$21,734.84		
Second division	31,850.91		
Third division	6,384.74		
Total		59,970.49	
3. From moneys received for fees, fines, and forfeitures for incidental expenses of court:			
First division	$0.00		
Second division	1,407.48		
Third division	0.00		
Total		1,407.48	
Total court expenses			112,373.91
Total amount disbursed for court and school purposes			179,337.50

DEPOSITS TO CREDIT OF TREASURER, UNITED STATES.

1. From money received for licenses in incorporated towns:		
First division	$18,000.00	
Second division	0.00	
Third division	0.00	
Total		$18,000.00
2. From moneys received for licenses outside of incorporated towns:		
First division	60,942.66	
Second division	0.00	
Third division	2,176.65	
Total		63,119.31
3. From moneys received for fees, fines, and forfeitures:		
First division	10,000.00	
Second division	0.00	
Third division	1,674.10	
Total		11,674.10
4. From receipts not available for court or other Territorial expenses:		
First division	492.55	
Second division	2,680.98	
Third division	0.00	
Total		3,173.53
Aggregate deposits		95,966.94
Available for school purposes outside incorporated towns		31,559.65

RECAPITULATION.

RECEIPTS.

Licenses for manufacture and sale of liquor	$168,149.92
Licenses for other purposes than manufacture and sale of liquor	117,585.45
Total for licenses	285,735.41
For fees, fines, and forfeitures	20,012.99
Total available for incidental expenses of court and school purposes	305,748.40
Not available for incidental expenses of court or school purposes	8,516.53
Aggregate	314,264.93

DISBURSEMENTS.

To treasurers of incorporated towns for school purposes	$66,963.59
For incidental expenses of the court	112,373.91
Aggregate disbursements	179,337.50

DEPOSITED TO THE CREDIT OF THE UNITED STATES.

From moneys received for licenses in incorporated towns	$18,000.00
From moneys received for licenses outside incorporated towns	63,119.31
From fees, fines, and forfeitures	11,674.10
From receipts not available for court or school purposes	3,173.53
Aggregate deposits	95,966.94
Amount available for school purposes outside incorporated towns	31,559.65

MEMORANDUM ON THE QUESTIONS OF PROCEDURE RAISED.

All these proceedings are of an anomalous nature, and present an effort to accomplish indirectly what can not be done directly—the restraint of the collection of a Federal tax.

The several cases naturally fall into two classes. The first two, Nos. 10 and 13, are suits by stockholders to restrain the corporations from applying for and obtaining the licenses required by the provisions of the statute. The other four (Nos. 26, 29, 30, and 31) can not properly be termed "cases" at all. They are merely protests made by the plaintiff companies upon their several applications for licenses under the statute. It may clarify the situation to consider the propriety of these latter proceedings first.

THE PROTESTS.

In No. 26, the *Pacific Steam Whaling Company*, a California corporation, made application, in the form of a petition, to the district court of Alaska for certain licenses. The application stated that the company was the owner of certain steamships engaged "in the transporting of freight and passengers between the different ports in the district of Alaska, doing a local business in said district in the prosecution of her voyages to and from different ports in the district of Alaska, and carrying freight and passengers for hire;" and that it was also engaged in the district of Alaska in the business of carrying on salmon canneries at certain places. In each instance the company denied the applicability of

the Alaskan statute to the business referred to, and also alleged the unconstitutionality of its provisions.

The company asked the court to determine whether it was required to pay into court any license or sum of money under the statute; and if the court should decide that pending the determination of the matters set up it should first obtain the license required by the act, that such license be granted and the money paid therefor be held by the clerk, under protest, subject to the further action of the court.

In Nos. 29, 30, and 31 the *Pacific Coast Steamship Company*, also a California corporation, was the applicant. In each application it was stated that the steamship for which a license was asked, and against the requirement of which protest was made, was engaged "in the transportation of freight and passengers from the port of Seattle and other ports of Puget Sound and the port of Victoria, British Columbia, to ports in Alaska;" but that "incidentally it does a local business in the said district of Alaska in the prosecution of her voyages to and from Alaska in the business first mentioned herein."

The averments and prayers of these three applications were almost identical, and do not differ in principle from each other or from those made in No. 29.

THE PROTESTS NOT A "CASE."

It is apparent from a mere statement of the nature of this group of "protests" that the district court of Alaska had no authority to entertain them for the purpose of passing upon the constitutionality of the provisions of the act in question. Such protests, as the court held, did not constitute a "case" of which a court, in the exercise of its powers as a court, could properly take

cognizance. It is well settled that, within the meaning of the Constitution, a "case" only arises "when some subject touching the Constitution, laws, or treaties of the United States is submitted to the courts by a party who asserts his rights in the form prescribed by law. In other words, a case is a suit in law or equity, instituted according to the regular course of judicial proceedings." (2 Story on Const., sec. 1646; *Osborn* v. *Bank of United States*, 9 Wheat., 708, 819.) It will hardly be argued that these protests, by which the constitutionality of the act of Congress is sought to be determined, are in the form prescribed by law or according to the regular course of judicial proceedings.

The act of May 17, 1884 (23 Stat., 24, sec. 3), establishing a form of civil government for Alaska, provides that the district court for that district thereby created shall exercise the civil and criminal jurisdiction of district courts of the United States, "and such other jurisdiction, not inconsistent with this act, as may be established by law." But whatever jurisdiction it may possess or receive, it must exercise the same according to the fundamental rules of judicial procedure. It has been given no authority to disregard them.

Under the act of 1899, the district court of Alaska was empowered and required to issue the licenses provided therein, but that fact could not authorize it, upon a mere application for a license coupled with a protest against it, to pass upon the validity of the statute imposing the license. Its authority upon such application was limited to determining whether or not the license should issue.

In the exercise of its power to grant licenses, the district court was performing an administrative and not a judicial function. The authority to issue licenses

is usually conferred upon an executive officer of the Government. It was conferred upon the district court in this instance, because that court, with its officers, the clerk, the marshal, and his deputies, formed practically the whole machinery of government in Alaska.

If, however, the authority to issue these licenses had been reposed entirely with the clerk of the court, or with some official wholly outside of the court, it would never have been contended that either would have had authority upon an application for a license, although possessing all the power of the court in that respect, to determine the validity of the statute requiring the license. Nor would it have been asserted that the applicant for a license, by filing a protest against its requirement in the district court (that court having nothing to do with the granting of the same), could have authorized or compelled the court to pass upon that question.

The only doubt in the present instance arises from a failure to distinguish between the different functions of the district court. The court could grant licenses. It might also, in the exercise of its strictly judicial powers, pass upon the validity of legislation. It is therefore speciously argued that upon an application for the exercise of the former power the latter also was invoked. But viewed as they should be, according to their separate and distinct nature, no confusion can exist. The judicial power of the court could only be invoked in the form prescribed by law. An application to it for a license was not a proper method.

THE SUITS.

The first two cases, Nos. 10 and 13, are suits in equity. In form, therefore, they are sufficient, but the question is as to their propriety.

No. 10, *Corbus* v. *The Alaska Treadwell Gold Mining Company*, was a suit by a stockholder of that company, a corporation of Minnesota doing business in Alaska, to have it restrained from paying the license taxes upon its business imposed by the act of 1899, namely, a tax of $3 upon each of the 450 stamps for crushing and reducing ore used by the company in its mining business, and a tax of $250 upon the mercantile establishment also conducted by it in Alaska.

The plaintiff alleged that he had not been able, because of the great distance at which the directors of the company resided, to request them to refuse to apply for a license and pay said tax, but that he had made such requests of the officers or agents of the company in Alaska, who had refused the same, for the reason that, while doubting the constitutionality of the law, they deemed it better to submit to the tax than to incur the consequences of a failure to comply with it.

The bill further alleged that the payment of the tax would diminish the dividends to be declared on the stock of the company, and that, unless the company complied with the act or the court grant the relief prayed for, "the said company would be exposed to a multiplicity of suits and prosecutions for the violation of the said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened, to the great and irreparable injury and damage to your orator and other shareholders in said company."

No. 13, *Stewart* v. *The Washington and Alaska Steamship Company et al.*, was also a suit by a stockholder to restrain that company, a corporation of Washington,

and its officers from applying for a license for one of its vessels, for the purpose of enabling it to carry on a coasting trade and business within the district of Alaska under the act of 1899; the license in this case amounting to $767.

The plaintiff averred that no license was required, and also that the act was unconstitutional.

No demand on the officers of the company not to pay the license fee was alleged; but it was averred that unless the defendants were restrained from such payment plaintiff "would be compelled to commence many suits for the purpose of maintaining his rights, and the moneys and funds of said corporation would be wasted, misappropriated, lost, and destroyed in an amount in excess of $5,000."

NO SUIT LIES TO RESTRAIN THE COLLECTION OF A TAX.

Section 3224 of the Revised Statutes provides:

> SEC. 3224. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

The taxpayer has not, however, been left without a remedy. Section 3226, Revised Statutes, provides:

> SEC. 3226. No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of the Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That

> if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

Commenting upon these provisions, Mr. Justice Miller, in the *State Railroad Tax Cases* (92 U. S., 575), said (p. 613):

> It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice nor irregularity of themselves give the right to an injunction in a court of equity. (*Moores* v. *Smedley*, 6 Johns. Ch., 27; *Dodd* v. *Hartford*, 26 Conn., 239; *Green* v. *Munford*, 5 R. I., 478; *Messert* v. *Supervisors of Columbia*, 50 Barb., 190; *Dow* v. *Chicago*, 11 Wall., 108; *Hannewinkle* v. *Georgetown*, 15 Wall., 548.)
>
> The Government of the United States has provided both in the customs and in the internal revenue a complete system of corrective justice in regard to all taxes imposed by the General Government, which in both branches is founded upon the idea of appeals within the Executive Departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid by suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid.
>
> That there might be no misunderstanding of the universality of this principle, it was expressly enacted in 1867 that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." (Rev. Stat., sec. 3224.) And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be

> feared if courts of justice could, *in any case*, interfere with the process of collecting taxes on which the Government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experiences of ages that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment. And to do this successfully other instrumentalities and other modes of procedure are necessary than those which belong to courts of justice. (See *Cheatham* v. *Norvell*, decided at this term; *Nickoll* v. *United States*, 7 Wall., 122; *Dow* v. *Chicago*, 11 Wall., 108.)

The rule thus announced—the absoluteness of the prohibition against suits to restrain the collection of taxes levied by the United States, and the exclusiveness of the remedy provided by the statute—has since been sustained by the decisions of this court, which have been followed by the other courts of the United States. (*Snyder* v. *Marks*, 109 U. S., 189; *Shelton* v. *Platt*, 139 U. S., 591, 597; *Pittsburgh, etc., Railway* v. *Board of Public Works*, 172 U. S., 32, 39.)

In *Snyder* v. *Marks*, the court held that a bill in equity would not lie to enjoin a collector of internal revenue from collecting a tax, although it was alleged to have been illegally assessed; that the prohibition in section 3224 of the Revised Statutes applied to suits to restrain illegal as well as legal taxes. In delivering the opinion Mr. Justice Blatchford said (p. 193):

> The inhibition of section 3224 applies to all assessments of taxes, made under color of their offices, by internal-revenue officers charged with general jurisdiction of the subject of assessing taxes against tobacco manufacturers. The remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given

> is exclusive, and no other remedy can be substituted for it. Such has been the current of decisions in the circuit courts of the United States, and we are satisfied it is a correct view of the law. (*Howland* v. *Soule*, Deady, 413; *Pullan* v. *Kinsinger*, 2 Abbott, U. S., 94; *Robbins* v. *Freeland*, 14 Int. Rev. Rec., 28; *Delaware R. R. Co.* v. *Prettyman*, 17 id., 99; *United States* v. *Black*, 11 Blatchford, 538, 543; *Kissinger* v. *Bean*, 7 Bissell, 60; *United States* v. *Pacific Railroad*, 4 Dillon, 66, 69; *Alkan* v. *Bean*, 23 Int. Rev. Rec., 351; *Kensett* v. *Stivers*, 18 Blatchford, 397.) In *Cheatham* v. *United States*, 92 U. S., 85, 88, and again in *State Railroad Tax Cases*, 92 U. S., 575, 613, it was said by this court that the system prescribed by the United States in regard to both customs duties and internal-revenue taxes of stringent measures, not judicial, to collect them, with appeals to specified tribunals and suits to recover back moneys illegally exacted was a system of corrective justice intended to be complete, and enacted under the right belonging to the Government to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues. In the exercise of that right it declares by section 3224 that its officers shall not be enjoined from collecting a tax claimed to have been unjustly assessed, when those officers, in the course of general jurisdiction over the subject-matter in question, have made the assignment and claim that it is valid.

The case of *Pollock* v. *Farmers' Loan and Trust Company* (157 U. S., 429) is an apparent exception to the general rule. In that case the court, speaking by the present Chief Justice, said (p. 554):

> The objection of adequate remedy at law was not raised below, nor is it now raised by appel-

> lees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the Government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves. Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits. (*Pelton* v. *National Bank*, 101 U. S., 143, 148; *Cummings* v. *National Bank*, 101 U. S., 153, 157; *Reynes* v. *Dumont*, 130 U. S., 354.)

Mr. Justice White, in whose dissenting opinion Mr. Justice Harlan concurred, was of opinion that the circuit court had no jurisdiction of the case. He said (p. 609):

> The decisions of this court hold that the collection of a tax levied by the Government of the United States will not be restrained by its courts. (*Cheatham* v. *United States*, 92 U. S., 85; *Snyder* v. *Marks*, 109 U. S., 189. See also *Elliott* v. *Swartwout*, 10 Pet., 137; *City of Philadelphia* v. *The Collector*, 5 Wall., 720; *Hornthall* v. *The Collector*, 9 Wall., 560.)
>
> The same authorities have established the rule that the proper course in a case of illegal taxation is to pay the tax under protest, or with notice of suit, and then bring an action against the officer who collected it. The statute law of the United States in express terms gives a party who has paid a tax under protest the right to sue for its recovery. (Rev. Stat., sec. 3226.)
>
> The act of 1867 forbids the maintenance of any suit "for the purpose of restraining the assessment or collection of any tax." The provisions of this act are now found in Revised Statutes, section 3224.

> The complainant is seeking to do the very thing which, according to the statute and the decisions above referred to, may not be done. If the corporator can not have the collection of the tax enjoined it seems obvious that he can not have the corporation enjoined from paying it, and thus do by indirection what he can not do directly.

Replying to the argument that the relief sought was in respect of voluntary action by the defendant company, and not in respect of the assessment and collection themselves, he said (p. 612):

> The assertion that this is only a suit to prevent the voluntary payment of the tax suggests that the court may, by an order operating directly upon the defendant corporation, accomplish a result which the statute manifestly intended should not be accomplished by suit in any court. A final judgment forbidding the corporation from paying the tax will have the effect to prevent its collection, for it could not be that the court would permit a tax to be collected from a corporation which it had enjoined from paying. I take it to be beyond dispute that the collection of the tax in question can not be restrained by any proceeding or suit, whatever its form, directly against the officer charged with the duty of collecting such tax. Can the statute be evaded in a suit between corporation and a stockholder by a judgment forbidding the former from paying the tax, the collection of which can not be restrained by suit in any court? Suppose, notwithstanding the final judgment just rendered, the collector proceeds to collect from the defendant corporation the taxes which the court declares in this suit can not be legally assessed upon it. If that final judgment is sufficient in law to justify re-

> sistance against such collection, then we have a case in which a suit has been maintained to restrain the *collection* of taxes. If such judgment does not conclude the collector, who was not a party to the suit in which it was rendered, then it is of no value to the plaintiff. In other words, no form of expression can conceal the fact that the real object of this suit is to prevent the collection of taxes imposed by Congress, notwithstanding the express statutory requirement that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." Either the decision of the constitutional question is necessary or it is not. If it is necessary, then the court, by way of granting equitable relief, does the very thing which the act of Congress forbids. If it is unnecessary, then the court decides the act of Congress here asserted unconstitutional without being obliged to do so by the requirements of the case before it.

But even if the exception made by the Pollock case be sustained, it is apparent from an examination of their circumstances that these cases do not come within its principles. Preceding the quotation above made from the opinion of the court in the Pollock case is this statement (p. 553):

> The jurisdiction of a court of equity to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits has been frequently sustained. (*Dodge* v. *Woolsey*, 18 How., 331; *Hawes* v. *Oakland*, 104 U. S., 450.)
>
> As in *Dodge* v. *Woolsey*, this bill proceeds on the ground that the defendants would be guilty of such breach of trust or duty in voluntarily making returns for the imposition of, and

paying, an unconstitutional tax: and also on allegations of threatened multiplicity of suits and irreparable injury.

There is no such relation between the defendant corporations and their stockholders in these two cases as existed in the Pollock case. In that case the Farmers' Loan & Trust Company was charged with the execution of numerous trusts, and it might well be said that its compliance with the provisions of the income tax law would have exposed it to numerous suits by those toward whom it occupied fiduciary relations.

WHEN A STOCKHOLDER MAY SUE.

Upon this subject, Taylor, in his treatise on Corporations, says:

SEC. 138. When in order to enforce corporate rights or avert wrongs threatening the corporate interests it is necessary to sue, the rule is that the suit must be brought by the corporate management in the name of the corporation. This rule applies to suits both at law and in equity. Individual shareholders are not the proper parties to sue or defend on behalf of corporate interests. If, however, the corporate management refuses or fails to enforce corporate rights and an irreparable injury to the corporate interests is threatened, a shareholder, in a case where the corporation itself would be entitled to an injunction, may bring suit on behalf of himself, and others interested who may join, to enjoin the threatened injury. In such case the shareholder should set forth in his complaint or bill the efforts that he has made to induce the corporation to act in the matter, should allege its refusal or failure to sue, and should make it a party defendant in the action.

SEC. 555. To warrant the interference of a court, at the instance of a shareholder, to restrain

> an act intended by the body corporate or the corporate management, the act should be beyond the corporate powers; or, if intended by the corporate management, a manifestly improper act which the body corporate is not in a position to prevent, owing perhaps to the fact that the management can not be changed in time.

In *Dodge* v. *Woolsey* (18 How., 331), referred to by the court in the Pollock case, it was held that a shareholder in a bank could maintain a bill to enjoin the collection of an unlawful State tax on the bank, the directors having declined to sue under circumstances that rendered their refusal a breach of trust.

Commenting on this decision, the court, in *Memphis City* v. *Dean* (8 Wall., 64), speaking by Mr. Justice Nelson, said (p. 73):

> The judgment of the court in *Dodge* v. *Woolsey* authorizes a stockholder of a company to institute a suit in equity in his own name against a wrongdoer whose acts operate to the prejudice of the interests of stockholders, such as diminishing their dividends and lessening the value of their stock, in a case where application has first been made to the directors of the company to institute a suit in its own name, and they have refused. This refusal of the board of directors is essential in order to give to the stockholder any standing in court, as the charter confers upon the directors representing the body of stockholders the general management of the business of the company. There must be a clear default therefore on their part, involving a breach of duty, within the rule established in equity, to authorize a stockholder to institute the suit in his own behalf or for himself and other stockholders who may choose to join.

It is plain that the suits by Corbus and Stewart against their respective corporations do not come within

the principles thus announced as entitling a shareholder to sue. In applying for a license under the Alaskan act, the defendant corporations could not be said to be doing an act *ultra vires*. Nor would such application be a misuse of the corporate funds and constitute a breach of trust. If, after obtaining a license, they had refused to sue to recover it back, the principles announced in *Dodge* v. *Woolsey* might apply, and a suit by a shareholder would have been authorized. But such is not the case here.

In the Stewart case it appears that the complainant resorted to his suit without even making a demand upon the management of the company not to pay the tax. In other words, supposing a suit to enjoin the company from paying the tax could have been maintained, if the company intended to act contrary to the wishes of a stockholder, or a majority of the stockholders, he failed to observe the very first requirement for the maintenance of such a suit.

WHEN A COURT OF EQUITY WILL INTERFERE TO RESTRAIN THE COLLECTION OF A TAX.

In the *State Railroad Tax Cases*, above cited, it was observed by Mr. Justice Miller that while section 3224, Revised Statutes, "was intended to apply alone to taxes levied by the United States" (which limitation would seem to include the taxes here in question, as they are certainly taxes levied by the United States), "it shows the sense of Congress of the evils to be feared if courts of justice could, *in any case*, interfere with the process of collecting taxes on which the Government depends for its continued existence." Referring to *Dow* v. *Chicago* (11 Wall., 108), he said (92 U. S., p. 614):

> In this latter case, this court, after commenting upon the necessary reliance of the State

governments upon the prompt collection of the taxes for their support and maintenance, and the ill consequences of interference with their proceedings in that matter, says: "No court of equity will therefore allow its injunction to issue to restrain their action, except where it may be necessary to protect the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, when the property is real estate, throw a cloud upon the title of complainant before the aid of the court of equity can be invoked."

So, in the case of *Hannewinkle* v. *Georgetown*, the court says: "It has been the settled law of this country for a great many years that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax can not be maintained. There must be an allegation of fraud, that it creates a cloud upon the title, that there is apprehension of a multiplicity of suits, or some cause presenting a case of equity jurisdiction." (15 Wall., 548.) We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax.

So, in the late case of *Pittsburgh, etc., Railway* v. *Board of Public Works* (172 U. S., 32), Mr. Justice Gray, speaking for the court, said (p. 37):

> The collection of taxes assessed under the authority of a State is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears not only that the tax is illegal but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction. (*Dows* v. *Chicago*, 11 Wall., 108; *Hannewinkle* v. *Georgetown*, 15 Wall., 547; *State Railroad Tax cases*, 92 U. S., 575; *Union Pacific Railway* v. *Cheyenne*, 113 U. S., 516; *Milwaukee* v. *Keffler*, 116 U. S., 219; *Shelton* v. *Platt*, 139 U. S., 591.)

In the case of *Corbus* v. *The Alaska Treadwell Company* the only equitable considerations alleged are that "unless the company should comply with said act or this court grant the relief herein prayed for the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the act," etc. But the plaintiff entirely ignores the fact that his company could easily escape the multiplicity of suits and prosecutions and its attending expense and injury by simply paying the tax under protest and suing to recover it back.

In *Stewart* v. *The Washington and Alaska Steamship Company* the equitable ground urged by the plaintiff is that, unless the company and its officers are restrained from paying the tax, "your orator would be compelled to commence many suits for the purpose of maintaining his rights, and the moneys and funds of

said corporation would be wasted, misappropriated, lost, and destroyed in an amount in excess of $5,000."

The weakness of this assertion is apparent. Why the plaintiff would be required to commence many suits for the purpose of maintaining his rights is far from clear. How he could bring so many suits for that purpose is also somewhat mixed. And it might be added that if he had the interests of his corporation at heart he would refrain from causing its moneys and funds to be wasted, misappropriated, lost, and destroyed to such a large amount by bringing so many needless actions. It would seem that he could have his rights determined in a single suit, if at all.

ADEQUATE REMEDY AT LAW.

If, as appellants contend, the license taxes imposed by section 460 of the Alaskan act are general taxes, the provision of section 3226, Revised Statutes, for the recovery of such taxes must unquestionably apply.

The section applies to "any internal tax" alleged to be erroneously or illegally assessed or collected. The taxes in question, though provided for Alaska only, must certainly be considered "internal" taxes, in view of the fact that they are levied by the United States and the proceeds therefrom go into the general Treasury. They undoubtedly raise internal revenue.

But even if section 3226 does not apply, the defendant corporations would not be without remedy. In *Erskine* v. *Van Arsdale* (15 Wall., 75), which was a suit against a collector of internal revenue to recover back certain taxes imposed by an act of Congress, Mr. Chief Justice Chase, in delivering the opinion of the court, said (p. 77):

> We think, as respects the second exception, that there is no error in the charge prejudicial

to the defendants. Taxes illegally assessed and paid may always be recovered back, if the collector understands from the payer that the taxes are regarded as illegal and that suit will be instituted to compel the refunding of them.

The case of *Ashley* v. *Ryan* (153 U. S., 436) is instructive as showing the course that may be pursued for the recovery of taxes illegally assessed. In that case the corporation law of Ohio provided that the secretary of state should charge and collect, for filing the articles of incorporation of any corporation whose capital stock was over $10,000, a fee of one-tenth of 1 per cent upon its authorized capital stock. A consolidated railroad corporation, composed of an Ohio corporation and several corporations organized under the laws of other States, presented its articles of incorporation to the secretary of state, but tendered only an amount representing the fee upon the capital stock of the Ohio corporation. The secretary refused to file the proffered articles for that amount, and demanded the fee upon the entire amount of the capital stock of the consolidated corporation. This amount was paid under protest, and suit was at once brought to recover all the excess paid over and above the amount originally tendered, upon the ground that such excess had been collected without warrant of law. Pending the controversy an injunction was issued restraining the secretary of state from covering into the State treasury the sum which had been paid him under protest.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE ALASKAN LICENSE CASES.

A. W. CORBUS, APPELLANT, *v.* THE ALASKA TREADWELL GOLD MINing Company.	No. 10.
CHARLES STEWART, APPELLANT, *v.* THE WASHINGTON AND ALASKA STEAMship Company et al.	No. 13.
THE PACIFIC STEAM WHALING COMpany, appellant, *v.* THE UNITED STATES.	No. 26.
THE PACIFIC COAST STEAMSHIP COMpany, appellant, *v.* THE UNITED STATES.	Nos. 29, 30, and 31.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

REPLY OF THE SOLICITOR-GENERAL TO NEW MATTER IN APPELLANTS' "POINTS MADE IN ARGUMENT."

I have just received a copy of appellants' additional brief, now finally filed. It is devoted largely to drawing "the deadly parallel" between what was said by

Government counsel nearly a year ago, in a brief filed before the cases were assigned for reargument, and what I said. This is amusing, but unimportant. I thought I had made it sufficiently plain, upon the argument, that the Government is not now submitting its case upon the brief filed last spring; if it were, I should not have taken the time of the court in arguing the case orally.

A great many cases are cited in this brief which were not cited before. Among them two Indiana cases (*Castle* v. *Bell*, 145 Ind., 8, and *Wilson* v. *Mathis*, id., 493), to the effect that a proceeding instituted in Indiana to obtain a liquor license is "a judicial proceeding." It may be conceded this is so, within the phraseology of the Indiana courts; but it is because of the provisions of the Indiana statutes. An appeal may be taken by an applicant or remonstrant from a decision of the board of county commissioners granting or refusing a liquor license in Indiana, and this appeal is to be docketed in the circuit court and tried and determined as an original cause.

Counsel renews the contention (certainly not in reply to anything I said) that these license fees collected from certain steamship companies are tonnage duties. The cases he relies on are inapplicable, because the taxes there held invalid were imposed upon vessels, or their owners, engaged in interstate or foreign commerce, and because of such business.

In the *Inman case* (94 U. S., 238), the tonnage tax was imposed upon all vessels entering the port of New York and loading or unloading at wharves there.

In the *Moran case* (112 U. S., 69), the license tax was imposed upon owners of "towboats navigating the Mississippi between New Orleans and the Gulf."

On the other hand, the Alaskan license tax referred to only applies to local business carried on for hire in Alaskan waters.

Many other cases are cited, but I will not weary the court by commenting on them.

JOHN K. RICHARDS,
Solicitor-General.

DECEMBER 30, 1902.

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REPORT

No 10 1000

See pp. 15-20-29-31

OFFICE SUPREME COURT of U. S.
RECEIVED
DEC 18 1902

OF THE

ASSESSOR OF THE DISTRICT OF COLUMBIA

FOR

THE YEAR ENDED JUNE 30, 1902.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1902.

REPORT

OF THE

ASSESSOR OF THE DISTRICT OF COLUMBIA

FOR

THE YEAR ENDED JUNE 30, 1902.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1902.

REPORT OF THE ASSESSOR.

WASHINGTON, D. C., *November 17, 1902.*

GENTLEMEN: I have the honor to submit herewith report of the operations of this office for the fiscal year ended June 30, 1902.

It has been customary for the assessor, in his annual report, to state the assessed value of real property for the ensuing fiscal year. I am unable to include such information in this report for the reason that by act of Congress the time for completion of the ensuing triennial assessment was extended, and these figures are not available. I give, however, the estimated assessed value.

The law under which personal property has heretofore been assessed having been declared inoperative by the court, and the law enacted to take its place not having been in operation long enough to demonstrate what it will produce, the figures as to estimated value of personal property and revenue therefrom are purely speculative.

Estimated value taxable real property	$219,192,208.00
Estimated value taxable personal property	46,666,600.00
Total	265,858,808.00
Estimated tax on real property	3,287,883.12
Estimated tax on personal property	700,000.00
Total	3,987,883.12
Estimated receipts from licenses	636,026.52
Estimated receipts from tax on real and personal property and licenses	4,623,909.64

Value of real property in the District of Columbia as assessed for taxation from 1871 to 1903, inclusive.

Year.	Washington.	Georgetown.	County.	Total.
1871	$66,818,886	$6,213,467	$6,965,101	$79,997,454
1872	62,421,331	6,036,434	6,500,000	74,957,765
1873	72,880,380	6,366,488	8,623,056	87,869,924
1874	80,539,782	6,272,010	9,621,280	96,433,072
1875	82,202,906	6,312,099	9,270,036	97,875,041
1876	78,818,934	5,849,317	8,748,433	93,452,684
1877	81,246,847	5,953,932	8,728,622	95,929,401
1878	83,101,484	6,028,041	8,480,365	97,609,890
1879	75,555,801	5,242,224	6,693,417	87,491,442
1880	76,085,940	5,291,313	6,603,103	87,980,356
1881	77,256,610	5,282,096	6,414,372	88,953,078
1882	78,515,793	5,296,943	6,525,759	90,308,495
1883	80,615,448	5,307,116	6,611,101	92,533,665
1884	80,293,418	4,013,888	6,541,368	90,848,674
1885	82,925,255	4,074,358	6,602,851	93,502,464
1886	85,132,151	4,160,222	6,760,956	96,053,329
1887	96,385,486	4,741,540	7,172,075	108,302,101
1888	99,430,297	4,908,345	7,406,186	111,744,830
1889	102,886,043	4,987,632	7,611,678	115,485,353
1890	119,613,603	5,395,021	12,617,795	137,626,419
1891	123,110,219	5,550,976	12,948,696	141,609,891

Value of real property in the District of Columbia as assessed for taxation from 1871 to 1903, inclusive—Continued.

Year.	Washington.	Georgetown.	County.	Total.
1892	$126,383,584	$5,682,676	$13,415,018	$145,481,278
1893	138,104,771	5,796,297	13,123,208	147,024,276
1894	140,269,876	7,023,070	23,524,858	191,117,804
1895	161,054,761	7,751,615	23,748,670	192,555,046
1896	165,399,819	.....	23,522,924	188,922,343
1897	156,854,384	.....	23,522,924	180,376,308
1898	158,582,366	.....	22,725,918	181,256,284
1899	159,559,921	.....	25,906,450	185,156,371
1900	151,498,501	.....	25,069,045	176,567,549
1901	154,349,966	.....	25,984,675	180,334,641
1902	155,903,114	.....	26,622,494	182,525,608
1903 (estimated)	.....	.....	.....	219,192,208

Value of personal property in the District of Columbia assessed for taxation from 1877 to 1903, inclusive.

Year.	Assessed value.	Year.	Assessed value.
1877	$15,429,873	1891	$11,697,650
1878	17,239,051	1892	11,826,190
1879	13,336,920	1893	12,045,290
1880	11,421,431	1894	11,206,364
1881	10,895,712	1895	11,449,485
1882	9,666,272	1896	10,971,737
1883	9,028,812	1897	9,582,851
1884	11,311,622	1898	9,780,658
1885	12,795,934	1899	13,431,475
1886	12,658,949	1900	14,391,138
1887	11,934,245	1901	12,567,084
1888	10,943,458	1902 (estimated)	15,962,805
1889	11,728,672	1903 (estimated)	46,666,600
1890	11,023,167		

TRIENNIAL REALTY ASSESSMENT.

The board of equalization and review of assessment of real property provided for in the act of August 14, 1894, endeavoring to meet the demand for increased revenues for the District and at the same time to do no injustice to property owners, deemed it wise to reconsider, in respect of each piece of property in the District of Columbia, the assessment returned by the board of assistant assessors. The board found that they could not thoroughly accomplish this task within the time provided by law, namely, by the first Monday in June. This fact being brought to the attention of the Commissioners, they solicited Congress to extend the time for such revision. Congress, by act approved April 29, 1902, extended the time for completion of the duties of the board of equalization and review until October 31, 1902.

TIME FOR PAYMENT OF TAXES.

By act approved June 6, 1900, provision was made for the payment of taxes in one installment in the month of May instead of two installments in November and May, respectively, as theretofore. The operation of this act was not found satisfactory, many property owners preferring to pay taxes in two installments, principally in cases of persons about to dispose of property and desiring to pay taxes as nearly as possible to date of sale. To remedy this trouble an act approved February 14, 1902, provided that hereafter the first half of each year's taxes may be paid in November at the option of the prop-

erty owner, the whole tax being due and payable the following May, and no penalty accruing until June 1. For the fiscal year 1903, however, the payment in November, 1902, had necessarily to be postponed because of delay in completion of triennial assessment, as hereinbefore explained. It is believed that the new arrangement will prove a satisfactory one.

TAXES ON PERSONAL PROPERTY.

The act of Congress approved March 3, 1877 (19 Stat., 396), provided for the assessment of personal property. This law in the course of time became practically a dead letter.

In the summer of 1901 I was instructed by the Commissioners to make every effort to enforce the provisions of said law. I at once had prepared the prescribed blank schedules and published in the newspapers the notice required by law, directing all citizens to make return of personal property within forty-five days. Within the forty-five days after publication of notice there were about twenty returns made to this office. The forty-five days having expired, I proceeded to the best of my ability, as required by law, from personal view and from the best knowledge obtainable, to assess personal property of those persons who had made no return, and to add to such assessment a penalty of 50 per cent. I visited the prominent residential portions of the city and the various local corporations, trust companies, etc., with a view to inspecting as much personal property as possible within the limited time allowed.

In the latter part of October, 1901, I was restrained by the court from making further assessments. I then brought into the office what information I had obtained, and listed the same for taxation. On December 20, 1901, the supreme court of the District of Columbia, in the case of Heald et al., Committee *v.* District of Columbia (At Law No. 45000), held that the act of Congress approved March 13, 1877, providing for assessment of personal property, had been rendered inoperative by reason of the abolition of the offices of two of the assessors, who, under law, were to make the assessment of personal property, and that the present assessor was not their successor with authority to perform their duties and to make the assessment. This, of course, put an end to all attempts to enforce the act of March 3, 1877. All arrears of personal taxes levied under the act referred to have subsequently been canceled by order of the Commissioners.

During the winter a new personal-tax law was drafted and after a great many changes made by direction of the committees of Congress, and many made by the committees themselves, the law was passed and approved July 1, 1902. This law did not become operative in the fiscal year for which this report is made, but it will probably not be out of place for me to state that the work incident to its enforcement is being pushed as rapidly as possible to the best of the ability of those intrusted with such responsibility, and it is believed that their efforts will meet with success.

CERTIFICATES OF TAXES.

During the past fiscal year there have been issued over the hand and seal of the assessor 6,520 certificates of taxes for which a fee of 50 cents each was collected. This is an increase over the number issued

in the fiscal year 1901 of 499. This work requires skill and the utmost care, as under the act of May 13, 1892, any tax or assessment omitted from such certificates is barred as to purchasers subsequent to the same. It affords me pleasure to state that the clerks in this branch of the business have been so painstaking that no errors have come to my notice.

In this connection, I desire to urge upon the Commissioners a recommendation to Congress that the act of May 13, 1892, be amended to provide that any tax or assessment omitted from a certificate of taxes shall, upon discovery of such omission, be canceled, and not, as the law now provides, barred as to any purchaser subsequent to date of said certificate. As the law now stands, it is necessary for property to change hands before such law becomes operative. Again, a property owner can not obtain a certificate for his own information upon the reliability of which he can depend. It is certainly in the interest of public policy and public right that when the District of Columbia, over the hand and seal of its appointed officer, gives its certificate as to the condition of taxes on property that such certificate should import absolute verity.

In addition to the certificates above mentioned, for which a fee is charged, there have been during the past fiscal year issued by this office 767 free certificates, accompanying subdivisions, condemnations of land, and tax deeds, involving the same care in their preparation as the regular certificates of taxes. This is an increase of 352 over the number issued during the fiscal year 1901.

EXEMPTION FROM TAXATION.

At the recommendation of the Commissioners, Congress inserted in the act of July 1, 1902, a provision that hereafter no property, except that of the United States or the District of Columbia, should be exempt from assessments for improvements. With the exception of this law the statutes concerning the exemption of real property from taxation lack conciseness and perspicuity, leaving a large amount of discretion in the District authorities, frequently resulting in claims of discrimination.

The United States and the District of Columbia are constantly acquiring more property in this district, thereby reducing the taxable basis. The total amount of exempt property, other than that owned by the United States and the District of Columbia, is $9,480,994, apportioned as follows: City, $7,322,118; county, $2,158,876. If the taxes were paid upon all this property the District would derive a revenue therefrom of $142,214.91 per annum.

It is an indisputable fact that churches, schools, hospitals, and institutions of kindred character are potent factors in the development of public morals, education, and health, tend to the prevention of crime, and the alleviation of much misery and suffering. When such institutions are conducted purely for the benefit of the public, they should be exempt from the payment of taxes; but when they are conducted by private enterprise and for individual gain, they should pay their share of the public financial burden.

Immunity from participation in the expense of the municipality is a privilege which should be sparingly granted. A statute should be enacted clearly defining what property is exempt from taxation, con-

fining the same to institutions conducted wholly for public benefit, and leaving as little discretion as possible with the officials of the Government, thus avoiding opportunities for, and claims of, discrimination.

TAX-SALE LAW.

A great deal of time and labor was expended during the past winter in the preparation of a tax-sale law to take the place of that of February 28, 1898, which had been found to be inadequate in many respects. The new law was passed substantially in the form in which it was drafted, and approved July 1, 1902. The date for sale of property for delinquent taxes is changed from the middle of April to the middle of March, making the sale occur at a time much more convenient for both the collector's and assessor's offices.

Heretofore, in the case of property which has been offered for sale and for want of bid bought in by the District of Columbia, the tax for which such property was bid in has, in the majority of cases, stood on the records indefinitely, the District having no practicable means of disposing of its lien. The new law provides a method for the enforcement of such liens, by which the Commissioners may, at any time after two years from the date property was bid in for the District, sell the same at public or private sale and issue to purchasers deeds for the same; or, if two years have not expired since property was bid in for the District, the collector of taxes may issue certificates of sale to any persons applying therefor, which may be converted by the holders into deeds two years after date of such certificates.

Provision is also made that purchasers at tax sale shall be required to deposit with the collector of taxes a sum sufficient, in his judgment, to guarantee a full and final settlement for such purchase. These provisions will not only be the means of enforcing nearly all the liens owned by the District of Columbia for arrears of taxes, but will prevent a practice which has frequently been resorted to in order to force the District to buy in property, i. e., the purchasing of property at tax sale by the owner and failure to pay the money within the required time, the law providing that if purchase money is not paid in within five days from date of sale the property shall be considered as bought in for the District of Columbia. It is believed that the operation of this law will prove very satisfactory.

PUBLIC INSPECTION OF RECORDS.

In my last annual report I strongly urged the recommendation to Congress of a change in the law with reference to access of the public to the records of the assessor's office.

The law in force at that time gave the public the privilege of inspecting the records at all times, and gave the assessor no discretion as to when or in what manner such examination might be made. I am glad to say that this has been remedied by act approved July 1, 1902, which provides that the assessor shall have the records of his office open to public inspection, free of charge, only at such time or times as the public interest will permit.

TRANSFERS OF REAL PROPERTY.

In transcribing deeds from the office of the recorder of deeds, wills from the office of the register of wills, and decrees of the court from the office of the clerk of the supreme court, for the purpose of making

proper transfers of real estate on the books and cards of this office, the greatest care and a technical knowledge of the subject are required.

During the fiscal year 1902 there were so transcribed and entered 5,729 transfers, 3,640 in the city and 2,089 in the county of Washington. This is an increase of 519 over the number of transfers in the fiscal year 1901. There are engaged in this work three clerks who have demonstrated their efficiency and attention to duty. One of these gentlemen, whose duty it is to make the transcripts from the original documents, and who is peculiarly adapted to such work, I have recommended for an increase in salary from $1,000 to $1,200, because of his efficiency, industry, and length of service.

TAX BILLS.

We have continued the practice adopted some time ago of preparing tax bills prior to the time tax becomes payable, having them arranged in alphabetical order, readily accessible when application is made for same, instead of the old method of making bills when called for. This has resulted in a great saving of time for the employees of this and the collector's office, and for the public, especially during the periods when the majority of taxes are paid.

UNIFORMITY OF RATE OF TAXATION.

For many years agricultural lands have been assessed at the rate of 1 per cent on their assessed valuation. By the act of July 1, 1902, this rate was changed to 1½ per cent, making the rate of taxation uniform throughout the District.

WATER MAIN TAX DEPARTMENT.

The corps of clerks engaged in auditing and placing on the card system the records of the water main tax department from the year 1866 to date completed their work early in the spring of 1902. This work has been thoroughly and efficiently performed, and changed from a chaotic condition to a modern business status an important and intricate set of books, which have for years needed such revision. At the present time the condition of any piece of property as to assessments for water main may be immediately determined.

The current work of this bureau is in charge of an industrious and competent employee, who keeps this important branch of the service at all times up to date.

PLATS AND DESCRIPTIONS OF COUNTY PROPERTY.

The county of Washington was, prior to 1872, under control of the old levy court. In that year the court was succeeded by the board of public works, but failed to deliver to its successor any of its records or plats. As a consequence, when the present form of government was installed it was wholly unprovided with plats of county property.

The first plats of unsubdivided land in the possession of this office, consisting of 30 plats 26 by 20 inches, were made by B. D. Carpenter in 1881 by authority of act of Congress approved June 4, 1880. At that time these were thought to be adequate for assessment purposes,

but as they do not give property by metes and bounds they are no longer of service.

In 1892 plats were made by D. J. Howell, by authority of act of Congress approved January 24, 1891. These have been found insufficient for purposes of assessment because of their general plan and of the fact that they were intended to give merely the deed lines, acreage, and names of persons to whom property was assessed.

It will, therefore, be observed that this office has never had in its possession reliable or comprehensive plats of the county upon which assessments should be based or for the purposes of reference.

In 1873 the assessed value of property in this portion of the District was $8,623,056, and in 1902, $26,622,494, which fact in itself demonstrates the absolute necessity for plats showing accurately all parcels of land embraced therein.

The plan for extension of streets having been approved, and the locations of such highways having been thus ascertained with reasonable permanency, a system should be devised providing each parcel of land with a distinctive number or designation, thereby furnishing a definite description for all purposes of assessment and conveyance, eliminating the probability of duplication of numbers and similarity of names of subdivisions, which under the present system are of daily occurrence, causing erroneous descriptions in assessing property and advertising same for sale for delinquent taxes, and much other annoyance and confusion.

An act of Congress approved March 3, 1899, was drafted to carry out this purpose, but as the surveyor thinks this law can not stand the test of the courts he has not attempted to carry out its provisions.

In this connection the following is quoted from a report of Mr. W. P. Richards, the engineer in charge of street-extension plans:

"In order to have a full and accurate description for assessing all lots and tracts of land in the District an act was passed March 3, 1899 (public No. 221), entitled 'An act to distinctively designate parcels of land in the District of Columbia for the purposes of assessment and taxation, and for other purposes.' As it was considered unwise to make any additions on the surveyor's books for such purpose, it was found necessary to have a set of maps to be used alone for assessment and taxation. I at once suggested that certain maps of this office could be copied for the assessor's office, but no money being available for the work, the act has practically been inoperative.

"The maps referred to in this office are clearly and accurately drawn and very complete as to details of the various recorded subdivisions of the District. These maps were prepared as an incident in the study and completion of the permanent system of highway plans, and the platting was based on an extensive system of measurements and triangulation made by this department and covering the entire District. The maps are on 190 sheets, 24 by 32 inches, drawn to a scale of 1 inch to 100 feet, and would, if extended to cover the entire county, consist of 260 sheets. Very little platting would be required to finish the set, as the maps that are lacking would include unsubdivided tracts and would have very few lines upon them.

"These maps are the only ones of the county drawn on so large a scale and in a shape for ready reference, and constant use of them by the various departments is tending toward their destruction. About half of them have been lithographed, but no funds are available for copying the others. If they are used as a base for the work authorized in the above-mentioned act, I estimate that $5,000 will be required to complete the set and lithograph the same. One set of plats could then be filed with the surveyor, one with the assessor, and one with the computing engineer, and they should be added to or changed from day to day as subdivisions are recorded, so that any map of the set would show the streets, subdivisions, and lots by the latest records."

In view of the facts set forth in the above-quoted report of Mr. Richards, the opinion of the surveyor as to the inefficacy of the act of

March 3, 1899, and the foregoing explanation of this office as to the unsatisfactory condition of the matter, I recommend the appointment by the Commissioners of a committee, composed of the corporation counsel, the surveyor, the engineer in charge of street extensions, and a representative of this office, to formulate a plan for renumbering and describing all lots and parcels of land in that portion of the District outside of the city of Washington, producing accurate plats of same and the probable cost of such work.

ARREARS OF TAXES.

In my annual reports for 1900 and 1901 I recommended that the Commissioners urge Congress to pass an act permitting payment of certain arrears of taxes, with 6 per cent per annum interest. This the Commissioners did, and, by act approved February 15, 1902, permission was granted for payment of delinquent taxes prior to tax for year 1900 at 6 per cent per annum in lieu of the usual penalties and interest, provided that such payment be made before December 31, 1902. The arrears of taxes having several years ago been placed upon the card system (which has been effectively maintained), the amounts due were readily accessible and a large amount of such arrearage has been paid. It is hoped before the expiration of the period during which such payments may be made a large majority of delinquent taxes which for years have been carried on our books may be wiped out. Another beneficial result of the passage of this law and the consequent inquiry of owners as to arrears has been the discovery of many of those errors and inaccuracies made years ago, which it has been my desire, since assuming the duties of this office, to eradicate.

It has been my policy, in connection with this matter, to notify owners of such delinquency whenever their addresses were ascertainable. This practice has been the means of bringing in a large amount of arrearages about which owners would not otherwise have been aware. It has also been my plan, as far as practicable, to notify owners of property before expiration of time within which they might redeem from sale property bid off at annual tax sales by persons other than the District of Columbia. While the law does not require notice in either of the cases cited, I consider it one of the most important functions of the assessor's office to in every way accommodate and facilitate owners of real estate in the matter of payment of taxes.

INCREASE IN NUMBER OF LICENSES.

There are some classes of business and trade not embraced in the recently enacted license law which should be required to pay licenses. I will, during the next session of Congress, submit to you draft of a bill to amend the existing law and include these cases.

SPECIAL-ASSESSMENT DIVISION.

The employees of the special-assessment division have been unusually busy during the past fiscal year. The amount of assessments levied in 1902 was $356,133.32 more than during the fiscal year 1901, the principal increase being in assessments for street extensions.

Assessments levied, 1902.

Assessment and permit work	$103,561.48
Improvements and repairs	4,315.24
Water-service connections	2,158.46
Construction of county roads	2,235.34
Extension of streets	381,331.92
Reassessments	40.99
Total	493,643.43

The supreme court of the District of Columbia has canceled during the fiscal year 1902 assessment and permit work amounting to $76.01.

The superintendent of sewers, in his report for the fiscal year 1902, recommends that assessments for sewers be levied in future at the rate of 1 cent per square foot of area of lots abutting upon sewers constructed. I think such method is manifestly wrong and unjust, and most earnestly protest against its adoption, inviting your attention to the following statement, the first and second columns of which are transcripts from the records of special-assessment division, showing the number and amount each of six special assessments for sewer, based upon actual cost of work as certified and transmitted by the engineer department. The third column shows amounts which would have been assessed against property if the assessments had been levied at the rate of 1 cent per square foot. The fourth column shows difference between amounts actually assessed and amounts which would have been assessed by the square-foot method at the rate suggested. The total cost of the sewers referred to in inclosed statement was $3,286.82, but under system proposed by superintendent of sewers the lots would have been assessed $4,606.37, which would put the District of Columbia in the position of making a profit of $1,319.55 from construction of sewers in question.

Assessments for sewers.

	Levied under act of Aug. 7, 1894.	If levied as proposed.	Increase of assessments under proposed plan.
6715	$887.53	$2,781.84	$2,194.31
6716	157.96	336.38	178.42
6717	225.42	372.81	147.39
6718	271.66	394.30	122.64
6719	316.59	541.04	224.45
6721	84.25	180.00	95.75
Total	1,943.41	4,606.37	2,962.96

In addition to this reason for opposing the proposed method of assessing for municipal improvements by the square-foot system is a practice which was sometimes resorted to in order to escape an equitable share of such assessments when assessments for water mains were levied by the square foot, i. e., the temporary deeding to some one other than the owner of a narrow strip of property abutting such improvements, thereby preventing assessment of the entire area of property benefited by the improvements.

Congress provided in act of July 1, 1902, that in cases where assessments for benefits for street extensions had been or should thereafter be levied, payment of the same should be made in five equal annual

installments, with interest at the rate of 4 per cent per annum from and after confirmation of the verdict of award, instead of the varying number of installments provided for in prior legislation as to the extension of specific streets and avenues. It also provided that the amount of any payment of any installment or installments theretofore made on account of any such assessment should be credited thereon, and that the balance should be due and payable as if such assessment had been originally payable in the installments and with the interest provided for in such act. This made uniform the number of installments of assessments provided for in various statutes.

The same act provided that in cases of payments of awards for damages there should be taken into consideration the assessments for benefits, and that only such portion of said award for damages should be paid as might be in excess of the assessment for benefits; also that there should be credited on assessments for benefits the amount of any award for damages not in excess of said assessment. This legislation minimizes the bookkeeping incident to such assessments and prevents a property owner from receiving his award for damages and then delaying indefinitely his payment of assessment for benefits.

The work of the special assessment division of this office has been performed in an efficient and satisfactory manner.

CURRENT BUSINESS OF THE OFFICE.

The fiscal year 1902 has been the busiest year in the history of the assessor's office, as is demonstrated by the volume of work performed and the results accomplished. It has frequently been necessary for the employees of the office to remain after hours and often to work at night in order to keep the current work of the office up to a high standard, to maintain which they all seem anxious to cooperate with the assessor. Every year the number of accounts, payments, subdivisions, transfers, communications, reports, etc., materially increases.

The routine work of the office requires great care and accuracy, involving as it does the keeping of the records of that branch of the government intrusted with the raising of the revenue. The clerks engaged in this work can not give it undivided attention because of the continuous interruptions occasioned by demands of the public for bills, information, etc. Taken as a whole, the employees of the office of the assessor deserve great credit for the small number of errors made, considering the technical character of the work and the difficulties under which it is accomplished. I have to thank them for their industry, efficiency, and cooperation.

LAWS RELATING TO TAXATION.

I append to this report a synopsis of the laws relating to taxation, which has been carefully prepared, and which I think will be found useful for purposes of reference.

DETAILS.

During the fiscal year 1902 there were detailed from this to the executive office 1 clerk at $1,200 per annum and 1 clerk at $900 per annum. There were detailed from the executive office to this office 1 clerk at $600, 1 messenger clerk at $480, and 1 messenger at $360 per annum.

SUMMARY.

In the foregoing report I have endeavored to bring to your attention those matters pertaining to this office which I considered most important, and about which you should be informed. It has been my endeavor to execute the duties of my office to the best of my ability, and I have been encouraged by evidences of your confidence and consideration, for which I thank you.

Very respectfully,

H. H. DARNEILLE,
Assessor District of Columbia.

The COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA,
Washington, September 17, 1903.

GENTLEMEN: Complying with your directions, I submit herewith estimate of the amounts required for the support of this department for the fiscal year ending June 30, 1904, as follows:

	Name of present incumbent.	Office, or other object of appropriation.	Appropriated 1903.	Estimated 1904.	Approved 1904.
1	Darneille, H. H	Assessor	$3,500	$3,500	
2	Kalbfus, S. T	Assistant assessor	2,000	2,000	
3	Montague, W. D	....do	1,600	1,600	
4	Alvey, T. F	Clerk	1,400	1,400	
5	Fitzhugh, H. M	....do	1,400	1,400	
6	Lesh, P. S	Clerk arrears division	1,400	1,400	
7	Mix, F. F	Clerk	1,200	1,200	
8	Kirk, J. S	....do	1,200	1,200	
9	Gage, S. D	....do	1,200	1,200	
10	Ashby, H. R	....do	1,200	1,200	
11	Nelson, R. E., jr	Draftsman	1,200	1,200	
12	Davis, C. M	Clerk	1,000	1,000	
13	Evans, A. K	....do	1,000	1,000	
14	Baker, L. T	....do	1,000	1,000	
15	Harkness, J. W	....do	1,000	1,200	
16	Luthers, M. M	Assistant or clerk	900	900	
17	Langston, F. M	Clerk, charge of records	1,000	1,000	
18	Herring, M. S	Clerk	900	900	
19	Ray, A. C	....do	900	900	
20	Bolton, H. B	License clerk	1,200	1,200	
21	Addison, L	Clerk	1,000	1,000	
22	Nicholson, L. L., jr	....do	1,000	1,000	
23	Donovan, W. J	Inspector licenses	1,200	1,200	
24		Assistant inspector licenses		1,000	
25	Moten, Wm	Messenger	600	600	
26		Temporary clerk hire	2,500	500	
27	Griffin, E. W. W	Assistant assessor	3,000	3,000	
28	Morsell, S. T. G	....do	3,000	3,000	
29	Trimble, Matthew	....do	3,000	3,000	
30	Hamilton, R	Clerk board assistant assessors.	1,500	1,500	
31	Howard, F	Messenger and driver	600	600	
	Total		43,600	42,800	
32		Salaries and expenses excise board.	5,500	5,500	
33	McKenzie, A	Assistant assessor personal tax appraisers.	3,000	3,000	
34	Nye, F	Assistant assessor personal tax appraisers.	3,000	3,000	
35	Smither, J. E	Clerk personal tax board	1,400	1,400	
36	Adams, B. F	Assistant clerk personal tax board.	1,000	1,000	
37	Lambeth, A. M	Inspector personal tax board.	1,200	1,200	
38	Woodward, H. E	....do	1,200	1,200	
39	Hendershot, J	....do	1,200	1,200	
40		....do		1,200	
41		Contingent expenses personal tax board, including $2,000 for extra clerk hire.	6,000	6,000	
	Total		18,000	19,200	

	Name of present incumbent.	Office, or other object of appropriation.	Appropriated 1903.	Estimated 1904.	Approved 1904.
42	Daniel, J. W	Special assessment clerk	$1,700	$1,700	
43	Trow, W. G	Clerk	1,200	1,200	
44	Cridler, D. M	do	1,200	1,200	
45	De Shields, W. H	do	1,200	1,200	
46	Bradshaw, A	do	1,200	1,200	
47	Hamilton, H. W	do	1,200	1,200	
48	Winchell, D. G	do	1,200	1,200	
49	Lee, A. J	do	1,200	1,200	
50	Boteler, J. E	do	900	900	
51	Mattingly, F. G	do	900	900	
	Total		11,900	11,900	
	Grand total		79,000	79,400	

EXPLANATION.

Item 15.—This is an increase of $200 per annum in the salary of a clerk who is employed in examining all deeds recorded and wills probated, separating therefrom those which are necessary for the purpose of making proper transfers of real estate on the books of this office. He is also required to examine the title to all property the ownership of which is uncertain or disputed. This work requires a knowledge of real-estate law, close application, and more than usual ability. The title companies pay men engaged in similar work a much higher salary. The incumbent is very efficient in this line, has been in the employ of the District for some years, and the increase asked for is inconsiderable when compared with the character of the work and the manner in which it is performed.

Item 24.—This is a new position, that of assistant inspector of licenses. At its last session Congress enacted a new license law, which largely increased the work of the license branch of the office. One inspector is unable to properly attend to the outside license work, and the new man asked for is indispensable to the proper enforcement of the law.

Item 25.—For the fiscal year 1903 Congress appropriated $2,500 for temporary clerk hire in this office. I do not anticipate that we will need that much during the ensuing fiscal year, but have asked for $500 to guard against contingencies at those times when the office is rushed with work beyond the capacity of its normal clerical force.

Item 30.—This is a new position, viz, an additional inspector for the personal tax board. Congress at its last session enacted a new personal-tax law and provided certain machinery for its enforcement. I find that we have not enough inspectors to properly attend to the outside work of this branch of the office, and have consequently asked for one new man. This position is essential to the proper enforcement of the personal-tax law.

The greatly increased volume of work incident to the new triennial assessment and the enforcement of the recently enacted personal tax and license law has necessarily delayed the preparation of the annual report of this department for the fiscal year 1902. It will be completed and forwarded to you at the earliest practicable date.

LICENSES ISSUED.

During the fiscal year ended June 30, 1902, 4,019 licenses were issued, including 514 barroom, 128 wholesale liquor, and 121 engineer licenses. There have been certified to the collector of taxes 1,193 certificates for miscellaneous receipts.

PUBLIC PASSENGER VEHICLES.

During the last fiscal year 367 passenger vehicles were licensed as follows, viz:

One horse	332
Two horse	35
Total	367

INSURANCE.

Since my last report the act of Congress approved March 3, 1901, entitled "An act to establish a code of law for the District of Columbia," has taken effect. The establishment of an insurance department terminated the authority of this office as

affecting that branch December 31, 1901. The receipts from that source during the last fiscal year show a decrease, due to the cause above mentioned.

July 1, 1902, Congress passed a new law imposing personal and license taxes in the District of Columbia. The withdrawal of the insurance branch has been more than offset by the additional labor incident to the collection of more than 27 different kinds of licenses not heretofore required.

Receipts from licenses during the year ended June 30, 1902.

Business.	Amount.	Increase.	Decrease.	Number in each class.
Apothecaries	$768.36	.....	$15.66	195
Auctioneers	1,925.00	.....	125.00	21
Banks and bankers	530.84	$14.31	.....	64
Billposters	75.00	55.00	.....	4
Billiard, pool, and other tables, etc	4,277.34	318.15	.....	412
Barrooms	207,406.10	.....	1,408.60	514
Cattle brokers	515.02	.....	138.34	29
Commission merchants	1,733.34	.....	73.34	45
Dealers in ice merchandise	312.00	.....	.....	3
Dealers in second-hand personal property	4,803.45	.....	100.07	135
Dealers in old barrels	50.00	10.00	.....	5
Entertainments, circuses, balls, etc	3,774.91	.....	470.09	595
Hotels	5,026.84	200.50	.....	94
Intelligence offices	210.01	.....	91.57	22
Insurance companies, District of Columbia	221.73	.....	1,250.69	20
Insurance agents	475.00	.....	2,894.45	189
Insurance agents (new)	1,711.74	1,711.74	.....	.....
Insurance associations (fraternal)	45.00	.....	.....	9
Insurance percentage tax	26,405.30	2,410.55	.....	192
Livery stables	3,348.17	.....	33.09	61
Manufacturers of illuminating gas	1,072.00	.....	72.00	2
Peddlers	200.09	.....	12.47	19
Public vehicles	2,039.90	.....	561.75	367
Pawnbrokers	1,008.34	308.34	.....	10
Produce dealers	7,678.71	.....	2,175.18	323
Restaurants and eating houses	7,735.55	286.22	.....	361
Real-estate agents	9,133.41	358.35	.....	191
Theaters	841.67	41.67	.....	9
Wholesale liquor dealers	32,701.70	2,023.50	.....	128
Total	326,026.52	7,748.33	9,422.30	4,019

Total receipts from licenses 1900–1901	$327,700.49
Total receipts from licenses 1901–1902	326,026.52
Total decrease	1,673.97
Total decrease 1901–2	9,422.30
Total increase 1901–2	7,748.33
Net decrease	1,673.97

H. H. DARNEILLE,
Assessor District of Columbia.

The COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

OFFICE OF THE ASSESSOR DISTRICT OF COLUMBIA,
November 17, 1902.

METHODS OF TAXATION IN THE DISTRICT OF COLUMBIA.

ASSESSMENT OFFICIALS.

Assessments of both real and personal property are made by the assessor and a board of 5 (act of July 1, 1902, and 28 Stat., 282) assistant assessors, 3 of said board being designated by the assessor to act as the assessors of real estate and as the excise board, and the two other members of said board designated by the assessor to compose the board of personal tax appraisers. All 5 members of said board of assistant assessors, together with the assessor, chairman, constitute the board of equalization and review of real-estate assessments, and also the board of personal tax appeals. The assessor, however, acts as chairman ex officio of the several boards aforesaid. The assessor and the members of the board of assistant assessors may not be removed except for inefficiency, neglect of duty, or malfeasance in office. The members of the board of assistant assessors are required to perform such other official duties as the assessor may from time to time direct. (Act of July 1, 1902.)

The salary of the assessor is $3,500 per annum and that of each of the members of the board of assistant assessors $3,000 per annum (28 Stat., 282, and act of July 1, 1902). The assessor is required to furnish bond in the sum of $10,000 (30 Stat., 666), and each member of the board must, before entering upon his duties, take an oath to diligently, faithfully, and impartially perform the duties imposed upon him. (28 Stat., 282.)

ASSESSMENT OF REAL PROPERTY.

Real estate is assessed triennially (28 Stat., 282) at not less than two-thirds of its true value (act of July 1, 1902), by the board of three assistant assessors (28 Stat., 282). This assessment must be completed on or before the first Monday of January in each third year, and return of the same made to the assessor, together with all maps, field books, surveys, plats, and all notes and memoranda concerning said assessment. The assessment must be made by said assessors from actual view and from the best sources of information obtainable.

The assessment then passes to the board of equalization and review, composed of the assessor, chairman, and five (act of July 1, 1902, and 28 Stat., 282) assistant assessors. This board convenes on the first Monday of January (28 Stat., 282), and continues in session until review of the assessment is completed, which must be, as nearly as practicable, by the first Monday of June in each third year. Public notice of the time and place of such meeting must be given by publication for two successive days in two daily newspapers in the District of Columbia. The members of the said board are authorized to administer oaths or affirmations, to summon, through the officers of the Metropolitan police force, any person to appear before said board to testify touching matters pertaining to the assessment, such witnesses being allowed the same fees as paid in civil actions before the supreme court of the District of Columbia.

Any person summoned and examined, as aforesaid, and knowingly making false oath or affirmation, is considered guilty of perjury, and upon conviction thereof may be punished according to laws for punishment of perjury (28 Stat., 285).

Any three members of said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman may be selected. It is the duty of the board of equalization and review to hear appeals from property owners, and to fairly and impartially equalize, as a basis for taxation, the values placed upon real property by the board of assistant assessors. In reaching their determination they may raise the valuations of such tracts or lots as, in their opinion, may have been returned below their value, and reduce the valuations of such as they may believe to have been returned above their value, to such sums as, in their opinion, may be the value thereof. Upon completion of the duties of the board of equalization and review the assessment must be approved by the Commissioners of the District of Columbia, after which approval it becomes the basis of taxation for the ensuing three years (28 Stat., 284).

Annually, on or about the 1st of July, the board of assistant assessors is required to make a list of all real property which shall have become subject to taxation, and which is not then on the tax list, and to fix the valuation thereof according to the rules prescribed for assessing real estate. They are also required to make a return of all new structures erected or roofed, and additions to, or improvements of, old structures of over $500 in value, which shall not have been theretofore assessed, specifying the tract or lot on which each of such structures shall have been erected and the

value of such structure, and they shall add such valuation to the assessment made of such tract or lot. When improvements on any tract or lot become damaged or destroyed, the board is required to reduce the assessment on such property to the extent of such damage.

Appeals from these yearly assessments are heard by the board of equalization and review between the first and third Mondays of July of each year.

If the board of assistant assessors shall ascertain that any real property has been omitted from assessment for any previous year or years, or has been so assessed that the assessment was void, they must at once reassess such property for each year of such omission and report the same, through the assessor, to the collector of taxes, who is required to at once proceed to collect the taxes so in arrears as other taxes are collected. However, no property which has escaped taxation is liable for a period of more than three years prior to assessment, except in the case of property involved in litigation.

Whenever a subdivision of any real property is made and recorded with the surveyor of the District the board of assistant assessors must reassess the property so subdivided, and the tax on such reassessment is due and payable at the semiannual payment of taxes next ensuing. (28 Stat., 284 and 285.)

RATE OF TAXATION.

The rate of taxation is uniformly, throughout the District of Columbia, 1½ per cent. (Act of July 1, 1902.)

BOOKS OF ASSESSMENT.

The books of assessment are prepared by the assessor before the first day of November in each year, and upon completion thereof the assessor is required to make a statement showing the total amount of the assessment of both real and personal property and the total amount of taxes to be collected under said assessments; which statement must be receipted by the collector of taxes, in triplicate, and said collector is held responsible, under his bond, for all such taxes, except such as he may not be able to collect after fully complying with the requirements of law. The original receipt of said assessment and taxes must be forwarded by the assessor to the First Comptroller of the Treasury, the duplicate to the auditor of the District of Columbia and the triplicate is to be retained by the collector. (27 Stat., 13.)

All real property must be assessed in the name of the owner or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided according to law, or otherwise passed into the possession of some other person or persons, and all real property the ownership of which is unknown shall be assessed "Owner unknown." (28 Stat., 282.)

TAX BILLS.

All general tax bills must be prepared under the direction of the assessor. (27 Stat., 13.) By order of the Commissioners, all special assessment and water-main tax bills are also prepared under his supervision.

DATE OF PAYMENT OF TAXES.

Taxes on realty are levied by fiscal years, and are payable one-half in November at the option of the owner, no penalty accruing for failure to pay said half until the whole tax becomes due in the following May. For failure to pay before the 1st of June, 1 per cent per month penalty is charged. (Act of February 14, 1902.)

PUBLIC INSPECTION OF RECORDS.

The assessor is required to have the records of his office open to the inspection of the public, free of charge, at such time or times as the public interest will permit. (Act of July 1, 1902.)

EXEMPTIONS.

The act of Congress approved March 3, 1877, made the following provisions as to exemptions from taxation:

"That the property exempt from taxation under this act shall be the following and no other, namely, first, the Corcoran art building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity conducted without charge to inmates, profit or income; cemeteries dedicated and used solely for burial purposes and without private income or profit; but if any portion of any such building, house, grounds or cemeteries so in terms excepted is larger than is absolutely required and actually used for its legitimate purpose and none other, or is used to secure a rent or income or for any business purpose, such portion of the same, or a sum equal in value to

such portion, shall be taxed against the owner of said building or grounds." (19 Stat., 399.)

This has been modified by the act of July 1, 1902, which provides:

"That hereafter property used for educational purposes, that is not used for private gain, shall be exempt from taxation, and all other property used for educational purposes shall be assessed and taxed as other property is assessed and taxed."

And also:

"And hereafter no property except that of the United States or the District of Columbia shall be exempt from assessments for improvements."

SALES FOR DELINQUENT TAXES.

The assessor is required to annually prepare a list of taxes on real property in arrears on the 1st day of July. The Commissioners must fix a date of sale and publish the list with notice of sale in a pamphlet, of which not less than 2,000 copies must be printed for distribution to taxpayers applying therefor. The Commissioners must also give notice, by advertisement twice a week for three successive weeks, beginning on the third Monday of February of each year, in three daily newspapers published in the District, that the pamphlet has been printed and that a copy thereof will be given to any taxpayer applying therefor at the office of the collector of taxes. In said pamphlet a description of property sufficient to identify the same is considered a proper description. The expenses of advertising and printing of pamphlet are paid by a charge of 50 cents for each lot or piece of property advertised.

If the taxes due, together with penalties and costs, shall not have been paid prior to date of sale, the property must be sold by the collector of taxes, under direction of the Commissioners, at public auction, in the collector's office, said sale commencing at least three weeks after first publication of said notice, and continuing each day (Sundays and holidays excepted) until all said delinquent property is sold.

The collector must require from every purchaser a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia shall pay the full amount of his bid, including surplus, if any, to the collector within five days after last day of sale, and if such payment is not made within time specified, deposit of person so failing to pay shall be forfeited to the District of Columbia, and collector shall issue certificate of sale for such property to the next highest bidder; and if the latter shall not pay the amount of his bid within two days thereafter, the sales upon which the bids were made shall be set aside by the Commissioners and the property shall be considered as having been bid in in the name of the District of Columbia.

In case no other person bids, or bids are insufficient to cover amount of taxes due, together with penalties and costs, the collector shall bid the amount due, together with penalties and costs, and purchase it for the District; but property so bid in for the District of Columbia is not thereafter exempt from taxation. Failure on the part of the District to enforce the liens thus acquired does not release property from any tax that may be due the District.

Immediately after close of sale, upon payment of purchase money, the collector must issue to all purchasers certificates of sale, and if the property is not redeemed from said sale within two years from last day thereof, by payment to the collector for the use of the holder of the certificate, the amount for which property was sold, exclusive of surplus, and 12 per cent per annum thereon, a deed must be given by the Commissioners to the holder of the certificate, which deed is admitted to be prima facie evidence of a fee simple title. No deed, however, can be issued until all taxes and assessments due on the property are paid, including taxes for which the District purchased property at tax sale. Nor must said deeds be executed if it shall be discovered that sales were for any cause invalid and ineffectual to pass title to property sold, in which case the Commissioners must cancel the sale and refund the purchase money with 6 per cent per annum interest, together with the surplus, if any.

If any conveyance made by the Commissioners of property sold for taxes shall be set aside by the court, the party in whose favor the decree is rendered must pay to the party holding the conveyance the amount paid for such taxes and conveyances, with interest at 6 per cent per annum. When any tax sale is for any reason set aside or canceled, the property embraced in said sale may be readvertised and sold at the tax sale next ensuing.

Minors and other persons under legal disability are allowed one year after attaining age or after removal of such disability to redeem property sold or bid off by the collector of taxes, by payment of the amount of purchase money with 8 per cent per annum interest, together with all taxes and assessments that have been paid thereon by the purchaser between the date of sale and date of redemption with 8 per cent per annum interest on the amount of such taxes and assessments.

Property sold as aforesaid is redeemable from said sale at any time within two years after last day of sale by payment to the collector of taxes, for the use of the

holder of the certificate, the sum mentioned therein, exclusive of surplus, with interest thereon at 12 per cent per annum after date of such certificate. Any surplus remaining after collection of tax, penalty, etc., must be deposited by the collector to the credit of the surplus fund, to be paid to owner or owners of property in the same manner as other payments made by the District, but if any property sold as aforesaid is redeemed from sale within the time allowed, the surplus collected at time of sale must be paid to holder of certificate.

The collector is required, within twenty days (exclusive of Sundays and holidays), after last day of sale, to file with the recorder of deeds a written report stating property sold other than that sold to the District of Columbia, to whom it was assessed, taxes due, to whom sold, amount paid, date of sale, cost of sale, and surplus, if any.

If property bid in for the District of Columbia shall not have been redeemed within two years from last day of sale, by payment of taxes, penalties, and costs due at time of sale, and 8 per cent per annum thereon, the Commissioners may sell said property at public or private sale, and issue to the purchaser a deed, which shall have the same force and effect as the deed provided for property sold at regular annual sale.

The collector of taxes may, at any time before expiration of time allowed for redemption of property bid in for District of Columbia, issue certificates of taxes to any person applying therefor, and if property is not redeemed within two years from date of said certificate, by payment of the face of the certificate, exclusive of surplus and 12 per cent per annum thereon, the Commissioners shall issue a deed to the holder of the certificate, which deed shall have the same force and effect as deeds given for property sold at regular annual tax sale. Deeds, however, shall not be issued, either in case of property bid in for the District which has not been redeemed within two years, or property bid in for the District upon which certificates of sale are issued within redemption period, unless all taxes and assessments due on the property are paid; nor if the sale to the District was for any cause invalid or ineffectual to give title to the property. (Act of July 1, 1902.)

The assessor is required to prepare and keep in his office, for public inspection, a list of all real estate sold for nonpayment of general or special taxes or assessments, said list to show the date of sale, for what taxes sold, in whose name assessed at time of sale, amount of sale, when and to whom conveyed, if deeded, or if redeemed from sale, the date of redemption. (27 Stat., 37.)

COLLECTION AND DEPOSIT OF REVENUES.

It is the duty of the collector of taxes for the District of Columbia to collect all revenues of the District and deposit the amount collected daily with the Treasurer of the United States, and he is held responsible under his bond for all taxes except such as he may not be able to collect after fully complying with the requirements of law. (20 Stat., 461; 27 Stat., 13.)

Section 2 of the District appropriation law of March 3, 1883, prescribes—

"That hereafter all moneys appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia, from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of section 4 of an act approved June 11, 1878." (22 Stat., 470.)

CERTIFIED STATEMENTS OF TAXES.

The assessor is required to furnish certified statements, over his hand and official seal, of all taxes and assessments, general and special, that may be due and unpaid at the time of making said certificates. For each certificate a fee of 50 cents must be paid to the collector of taxes.

When such certificate is issued, it is a bar to the collection from any subsequent purchaser of any tax or assessment omitted from, and which may be a lien upon the real estate mentioned in, said certificate; but such omission does not affect the liability of the person who owned the property at the time such tax was assessed. (27 Stat., 37.)

TEMPORARY REDUCTION OF INTEREST ON ARREARS OF TAXES.

If arrears of taxes for years prior to 1900 are paid before December 31, 1902, 6 per cent per annum interest is charged, instead of usual penalties and interest. (Act of February 15, 1902.)

REASSESSMENTS.

The Commissioners of the District of Columbia are authorized and directed, in cases where general taxes or assessments for local improvements are quashed, set aside, or declared void by the supreme court of the District of Columbia by reason of imperfect or erroneous description of the property against which same was levied, by reason of such tax or assessment not having been authenticated by proper officer, by reason of a defective return of service of notice, or for any technical reason other

than the right of the public authorities to levy the tax or assessment, to reassess the property in question, with power to collect such reassessment. Said reassessment, however, must be made within ninety days after judgment or decree of court quashing or setting aside such taxes or assessments. Any amount theretofore paid on the assessment which has been declared void shall be credited upon the reassessment. (29 Stat., 98, and 30 Stat., 721.)

DESIGNATIONS OF PARCELS OF LAND.

Act of March 3, 1899, prescribed a system for numbering each lot, part of lot, or parcel of land in the District of Columbia. The object of this act was to procure uniformity in this respect and to prevent duplications in numbers.

TRANSCRIPTS OF DEEDS, WILLS, ETC.

Act of March 3, 1899, section 3, is as follows:

"That the Commissioners of the District of Columbia shall cause to be made a daily transcript and entry on the records of said assessor of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcripts shall for this purpose at all times, during office hours, have full access to the records of the recorder of deeds and the register of wills of said District." * * *

SPECIAL ASSESSMENTS.

ASSESSMENT AND PERMIT WORK.

The Commissioners of the District of Columbia are authorized (28 Stat., 247 and 248), whenever in their judgment the same is necessary for the public health, safety, or comfort, or when application is made therefor, accompanied by a deposit equal to one-half the estimated cost of the work, to improve and repair alleys and sidewalks, and to construct sewers and sidewalks of such form and materials as they may determine, and to pay the total cost of said work from appropriations for assessment and permit work.

Notice must be given by advertisement, twice a week for two weeks, in two newspapers published in the city of Washington, of any such assessment work proposed to be done, designating the location and kind of work, specifying the kind of materials to be used, the estimated cost, and fixing a time and place when and where property owners about to be assessed may appear and present objections thereto and for hearing thereof. One-half of the total cost of such improvements, including expenses of assessment, must be charged against and become a lien upon abutting property, and assessment therefor must be levied pro rata according to the linear frontage of such property.

Notices of the levying of such assessments must be served upon each lot owner, if he or she be a resident of the District and his or her residence known; and if he or she be a nonresident of the District, or his or her residence unknown, such notice must be served upon his or her agent or tenant, as the case may be; and if there be no agent or tenant known to the Commissioners, then they shall give notice of such assessment by advertisement, twice a week for two weeks, in some newspaper published in the District. Service of such notice where owner or his or her tenant or agent resides in the District must be either personal or by leaving the same with some person of suitable age, at the residence or place of business of such agent, owner, or tenant, and return of such service must be made in writing and filed in the office of the Commissioners. The costs of publication of notice and service of notices are paid out of the appropriation for assessment and permit work.

One-half of the cost of such work must be paid to the collector of taxes as follows: One-third within sixty days after service of notice of assessment, without interest; one-third within one year, and the remainder within two years from date of service of notice, interest being charged at 8 per cent per annum from date of service of notice on amounts unpaid at expiration of sixty days after service of notice of assessment.

Any property upon which such assessment and accrued interest thereon, or any part thereof, remains unpaid at expiration of two years from date of service of notice of assessment, shall be subject to sale therefor under the same conditions and penalties imposed for nonpayment of general taxes. If any property, assessed as heretofore explained, shall become liable to sale for any other assessment or tax whatever, then

the assessments levied as hereinbefore explained become immediately due and payable, and the property against which they are levied may be sold therefor, together with the accrued interest thereon and the costs of advertising to date of such sale.

Property owners who request improvements under the permit system must deposit, in advance, with the collector of taxes, an amount equal to one-half the estimated cost of such improvements, and in such cases it is not necessary to give notices, as hereinbefore stated.

All moneys received by the collector of taxes for work done upon request of property owners must be deposited by him in the United States Treasury to the credit of the permit fund.

Upon completion of the work done, as aforesaid, at request of property owners, the Commissioners must repay to the then current appropriation for assessment and permit work, out of the permit fund, a sum equivalent to one-half the cost of the work, and shall return to the depositors from the said fund, when application is made therefor, any surplus that may remain over and above one-half the cost of the work. (28 Stat., 247 and 248.)

HOUSE CONNECTIONS.

The cost of service connections with water mains and sewers are assessed against the lots for which said connections are made, and collected in same manner and upon same conditions as to notice, as provided for assessment work. (28 Stat. 248.

OPENING, WIDENING, ETC., OF MINOR STREETS AND ALLEYS.

In the opening, widening, extending, or straightening of minor streets or alleys the Commissioners are authorized to make application in writing to the marshal of the District of Columbia to summon and impanel a jury of twelve citizens who have no interest in the real estate in question. It is the duty of the marshal to summon and impanel the jury, who, having taken oaths in writing to discharge the duties imposed upon them, shall ascertain and appraise the damages which may accrue to any real estate by said opening, widening, extending, or straightening of minor streets or alleys, which damages shall be the value of the land at the time of taking. Said jury shall file a statement in writing in the office of the Commissioners of the District of Columbia, and a duplicate in the office of the recorder of deeds, of the damages so ascertained and appraised, and the amount thereof must be paid by the District of Columbia to the persons respectively entitled thereto out of any funds available therefor.

The jury shall also apportion, according to the benefits sustained by each lot or part of a lot of land in said square by the opening, widening, extending, or straightening of such minor street or alley, the amount of said damages ascertained and appraised as aforesaid, including $5 for service of marshal when actually employed and $5 per diem for service of each of said jurors when actually employed. The jury shall make return of said apportionment to the recorder of deeds and the Commissioners of the District of Columbia, designating each lot or part of lot of land in such square so benefited and the amounts so apportioned to each, respectively. In case of failure to pay the amounts so apportioned, the Commissioners or some one designated by them must levy an assessment upon each lot or part of lot of land in accordance with such apportionment, the same to be collected as other special assessments upon real estate are collected, said assessments, however, bearing interest at the rate of 10 per cent per annum.

The marshal must give at least ten days' written notice to each proprietor of land affected of the time and place of the meeting of such jurors, return of service of notice to be made by the marshal to the Commissioners, the manner of delivery of such notices being more particularly described in section 1613 of the Code of Law of the District of Columbia. (Code, 1608 to 1613.)

EXTENSIONS OF STREETS AND AVENUES.

In the case of extensions of streets and avenues the Commissioners are authorized to petition the supreme court of the District of Columbia for the condemnation of land necessary for such extension, said court appointing a jury for that purpose, and the jury making return of benefits and damages to abutting property. (Act of March 3, 1899.) Assessments are then levied for benefits to abutting property, such assessments being payable in five equal annual installments, with interest at 4 per cent per annum after sixty days from confirmation of verdict of jury; but in case of awards for damages only that part of said award is paid by the District as may be in excess of assessment for benefits, and there is credited on assessment for benefi

the amount of any award for damages not in excess of said assessment. (Act of July 1, 1902.)

If the aggregate amount of benefits to be assessed as determined by the jury is less than one-half of the amount of award for damages, the Commissioners may, in their discretion, reject the award and assessment, and all proceedings thereunder shall in that event be null and void. (Act of June 6, 1900.)

ASSESSMENTS FOR WATER MAINS.

The Commissioners of the District of Columbia are authorized, whenever in their judgment the same may be necessary for the public safety, comfort, or health, to lay water mains (26 Stat., 159), and to levy within thirty days after such water mains shall have been laid assessments against property abutting such mains at the rate of $1.25 per linear front foot. (Act of February 21, 1901). However, the law requires that corner lots shall be assessed only on their front with a depth of not exceeding 100 feet, any excess of the other front over 100 feet being subject to assessment. (28 Stat., 275.)

Owners of property affected must be notified that the same has been assessed by a notice to be served upon such owner if he or she be a resident of the District of Columbia and his or her residence known. If the owner be a nonresident, or his or her residence unknown, notice shall be served upon his or her agent or tenant. Service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant, and return of such service, stating the manner thereof, shall be made in writing and filed in the office of the Commissioners. If there be no agent or tenant known to the Commissioners, notice of assessment shall be given, by the officer designated by the Commissioners to perform that duty, by advertisement, once a week for two successive weeks, in some daily newspaper published in said District. In said publication each several piece of property must be described in separate paragraphs, and the costs of such publication must be added to amount of assessment and collected in the same manner that the assessment is collected. (Act of February 21, 1901.)

Assessments are payable in three equal installments, the first being payable without interest within thirty days from service of notice or of last publication of notice of assessment, as the case may be, the second within one year and the third within two years from date of such service or of last publication of notice, interest at 6 per cent per annum being charged on all amounts remaining unpaid at the expiration of thirty days from date of service of notice or of last publication of such notice. (Ibid.)

If, however, the entire assessment is paid within thirty days from date of service of notice, a discount of 6 per cent is allowed. (L. A., June 23, 1873.)

Any parcel of land the entire area of which was assessed for water main by the square foot and such assessment paid under the provisions of act of legislative assembly approved June 23, 1873, is exempt from further assessment for water main. (Ibid.)

If water-main assessments are quashed or set aside by the court by reason of any technicality, the Commissioners are authorized to reassess the lot or parcel of land against which assessment was levied, but such reassessment must be made within thirty days from date of cancellation. (Act of July 8, 1898, and 29 Stat., 98.)

Outside of the city of Washington assessments against land not subdivided into blocks and lots must be made on a frontage of not exceeding 100 feet for each lot or parcel of land, and shall be considered in any subsequent subdivision as extending to a depth of not exceeding 100 feet from the front of said lot or parcel of land. (30 Stat., 722.)

Water-main assessments must be levied and authenticated by the Commissioners of the District of Columbia, who must designate the official whose duty it is to notify the owner or agent of any lot or land of such assessments. (30 Stat., 722.) The assessor was designated for this duty by order of Commissioners dated November 17, 1900.

In any assessment or reassessment levied under provisions of act of July 8, 1898, owner of lot or parcel of land assessed must be credited with any amount which may have been paid prior to date of said act upon any water-main assessment levied against such lot or parcel of land. (30 Stat., 722.)

All moneys received on account of laying of water mains and all other moneys received on account of the water department must be deposited to the credit of the water fund, to be used exclusively for the support of the water department. (L. A., June 23, 1873.)

EXEMPTION FROM ASSESSMENT FOR IMPROVEMENTS.

The only property exempt from assessment for improvements is that of the United States and the District of Columbia. (Act of July 1, 1902.)

ASSESSMENTS FOR REMOVING OR SECURING DANGEROUS STRUCTURES.

The costs of removing or securing, by the District of Columbia, dangerous structures, upon refusal or neglect of owners to perform such work after due notice, must be assessed against the land upon which structure or structures stand or stood, and unless such assessment is paid within ninety days from service of notice the same shall bear interest at rate of 10 per cent per annum from date of assessment until paid and shall be collected as general taxes are collected. (30 Stat., 123.)

ASSESSMENTS FOR INCLOSING DANGEROUS WELLS, ETC.

The cost of fencing or otherwise inclosing, by the District of Columbia, lots upon which exist uncovered wells or other dangerous holes or excavations, after neglect or refusal of owner to perform such work upon due notice, shall be assessed as a tax against the property on which such nuisances exist, the tax so assessed to bear interest at rate of 10 per cent per annum and to be carried on regular tax rolls and collected in manner provided for collection of other taxes. (30 Stat., 924.)

ASSESSMENTS FOR REMOVAL OF WEEDS.

The expense of removal, by the District of Columbia, of weeds of 4 inches or more in height from unoccupied land in the city of Washington or its more densely populated suburbs, upon failure or neglect of owner to perform such work, shall be assessed against the property on which such weeds were located, and said assessments shall bear interest at rate of 10 per cent per annum until paid, shall be carried on regular tax rolls of the District, and paid in manner provided for collection of general taxes. (30 Stat., 959.)

ASSESSMENTS FOR DRAINING LOTS.

In case owner or owners of lots, after due notice, fail or neglect to connect such lots with water mains and sewers, as required by law, the Commissioners shall cause such connections to be made, the expense to be paid out of the emergency fund, such expense, with necessary costs of advertising, to be assessed as a tax against such lots, which tax shall be carried on regular tax rolls and be collected in manner provided for collection of other taxes. (29 Stat., 126.)

The Commissioners are also authorized to make such connections upon any street or avenue about to be paved or otherwise improved before any such pavement or other permanent works are put down, the costs of such connections to be assessed as explained above. (20 Stat., 107; 28 Stat., 144; 29 Stat., 126.)

SPECIAL POLICEMEN AT STREET-RAILWAY CROSSINGS.

The Commissioners are authorized and required to station special policemen at such street-railway crossings and intersections in the city of Washington as they may deem necessary, the expense of such services to be paid pro rata by the respective railway companies. (30 Stat., 489.)

ASSESSMENTS FOR CLEANING OF OFFENSIVE CESSPOOLS.

For cleaning offensive cesspools, by the District of Columbia, in cases where owners or other responsible parties fail or neglect to perform such work, after due notice, the Commissioners are authorized to assess the cost thereof as a tax against the property benefited, which tax shall be carried on the regular tax roll and collected in the manner provided for collection of other taxes. (30 Stat., 233.)

LIGHTING TRACKS OF STEAM RAILWAY COMPANIES.

All railway companies using engines propelled by steam must pay the District of Columbia for the lighting of the streets, avenues, lands, and grounds through which their tracks may be laid. In case of default of such payment, actions at law may be maintained by the District of Columbia against said railway companies. (22 Stat., 466.)

COSTS OF ERECTION OF FIRE ESCAPES.

If the owners, proprietors, lessees, or trustees of buildings used as factories, manufactories, tenement houses, seminaries, colleges, academies, hospitals, or asylums, fail to provide such buildings with fire escapes, standpipes, ladders, lights, and

alarm gongs, as required by law, after due notice from the Commissioners, such fire escapes, etc., must be erected by the Commissioners, and the costs thereof assessed as a tax against the building on which they are erected and the ground upon which the same stands, and the Commissioners shall issue tax-lien certificates against such buildings and grounds for the amount of such assessment, bearing interest at rate of 10 per cent per annum, which certificates may be turned over by the Commissioners to the contractor for performing the work. (28 Stat., 810.)

ASSESSMENTS FOR REMOVING SNOW, ICE, DIRT, ETC.

In case the owner or tenant of any house, lot, building, or land shall neglect to cause to be removed snow, ice, sand, dirt, gravel, etc., from paved sidewalks adjacent to said property, as required by law, the Commissioners shall cause removal of same, the costs of which shall be assessed as a tax against the property to which the sidewalks in question belong, and the said tax so assessed, shall be carried on the regular tax roll and collected in manner provided for collection of other taxes. (28 Stat., 809.)

ASSESSMENTS FOR PAVING STREETS ADJACENT TO STREET-RAILWAY TRACKS.

When any street or avenue through which a street railway runs shall be paved, such railway companies shall bear all of the expense for that portion of the work lying between the exterior rails of the tracks of such roads and for a distance of 2 feet from and exterior to such tracks, on each side thereof, and of keeping the same in repair; and when street railways cross any street or avenue the pavement between the tracks of such railway shall, at the expense of the company owning the tracks, be made to conform to the pavement used upon such street or avenue. If any street-railway company shall neglect or refuse to perform the work required, said pavement shall be laid by the District of Columbia and the costs collected from such company by issuing certificates of indebtedness against the property, real or personal, of such railway company, which certificates shall bear interest at the rate of 10 per cent per annum until paid, and which, until paid, shall remain a lien upon the property on or against which they are issued, together with the franchise of said company; and if such certificates are not paid within one year the Commissioners may proceed to sell the property against which they are issued, or so much thereof as may be necessary to pay the amount due, such sale to be first advertised daily for one week in some newspaper published in the city of Washington, and to be at public auction, to the highest bidder. (20 Stat., 106.)

TAXATION OF PERSONAL PROPERTY.

The board of personal tax appraisers consists of the assessor, chairman, and the two members of the board of assistant assessors detailed to that duty as hereinbefore explained. (Act of July 1, 1902, and 28 Stat., 282.)

The assessor is required to annually cause to be prepared a printed blank schedule of all tangible personal property and of general merchandise, stock in trade, owned or held in trust, or otherwise, subject to taxation, and of the classes of corporations and companies to be assessed, together with the rate of tax prescribed, to which shall be appended an affidavit in blank, setting forth that the return presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be.

When said schedule is ready for delivery, notice thereof must be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in the District of Columbia, and a copy of said schedule must be delivered to any citizen applying therefor at the office of the assessor. These schedules must be filled out and sworn to, and returned to the office of the assessor within thirty days after the last publication of advertisement. The members of the board of personal tax appraisers are authorized to administer, without charge, oaths for this purpose. For failure to make return within specified time, 20 per cent of assessed valuation of personal property is added.

Upon the filing of these returns, the two members of the board of assistant assessors designated by the assessor to assess personal property must, under the direction and supervision of the assessor, assess personal property. If the board of personal tax appraisers is not satisfied as to the correctness of any return of personal property they may reject the same, and said board, or any one of the members thereof, may, from the best information he or they can procure, by making such an examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just, and notice of the rejection of the return shall be given to the party interested by leaving the same at the address given in said return.

In all cases, however, there is the right of appeal to the board of personal tax appeals, hereinafter referred to, within fifteen days after delivery of said notice of rejection. Any person making a false affidavit as to taxation of personal property is deemed guilty of perjury, and, upon conviction, is subject to the penalties provided for that offense.

If the personal-tax appraisers fail to complete any of the duties required by law to be performed by them within the time specified, the taxation based upon the same is not, by reason thereof, invalid, but the appraisers must proceed with all reasonable diligence to complete such duties, and their acts are valid as if performed within the time provided therefor.

If at any time within any current year property subject to taxation shall be discovered to have been omitted from assessment the board of personal-tax appraisers shall immediately assess the same for the then current year, giving notice in writing to the persons or corporation so assessed, who shall have the right of appeal within ten days from date of said notice.

BOARD OF PERSONAL-TAX APPEALS.

The board of 5 (act of July 1, 1902, and 28 Statutes, 282) assistant assessors, with the assessor as chairman, compose a board of personal-tax appeals, which must convene in a place to be provided therefor by the assessor, on the 15th of November in each year, public notice of the time and place of such meeting having been given by advertisement for two consecutive secular days in two daily newspapers published in the District of Columbia. It is the duty of this board, between the day of convening and December 15th of each year, to hear all appeals made by any person or persons against the assessments made by the board of personal-tax appraisers, and to impartially equalize the valuation of said personal property as the basis for assessment.

Any four members of said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman may be chosen. The board is empowered to diminish or increase such assessments as they may believe to have been returned at other than their true value to such amount as in their opinion may be the value thereof, and the action of the board in such cases is final.

DISTRAINT AND SALE.

When the taxes on personal property due and payable in each year shall not be paid on or before the 1st of June, the collector of taxes or his deputy may distrain sufficient goods and chattels found within the District of Columbia and belonging to the person charged with such tax to pay the taxes remaining due, together with the penalty thereon, and the costs that may accrue; and for want of such goods and chattels said collector of taxes may levy upon and sell at auction the estate and interest of such person in any parcel of land in said District; and in the case of the levy on any estate or interest in land the proceedings subsequent to sale thereof are the same as provided by law in the case of sales for arrears of taxes against real estate; and in case of distraint of personal property or the levy upon real estate, as aforesaid, the collector of taxes must immediately proceed to advertise the same by public notice, to be posted in the office of said collector, and by advertisement three times within one week, in one or more of the daily newspapers published in said District, stating the time when and the place where such property will be sold, the last publication to be at least six days before the date of sale, and if the said taxes and penalty thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the day fixed for such sale, which must not be less than ten days after said levy or taking of said property, the collector must proceed to sell at public auction in his office to the highest bidder such property, or so much thereof as may be needed to pay such taxes, penalties, and accrued costs and expenses of such distraint and sale. Said collector must report in detail in writing every distraint and sale of personal property to the Commissioners of the District of Columbia, or their successors in office, and his accounts in respect to every such distraint or sale must forthwith be submitted to the auditor of the District of Columbia and be audited by him. Any surplus resulting from such sale over and above such taxes, costs, and expenses must be paid into the Treasury, and upon being claimed by the owner or owners of the goods and chattels aforesaid must be paid to him or them upon the certificate of the collector of taxes stating in full the amount of such excess.

RATE OF TAXATION ON PERSONAL PROPERTY.

On all tangible personal property assessed at a fair cash value (over and above the exemptions provided), including vessels, ships, boats, tools, implements, horses and other animals, carriages, wagons, and other vehicles, there must be paid 1½ per cent on the assessed value thereof.

Dealers in general merchandise of every description must pay 1½ per cent on their average stock in trade for the preceding year.

It is unlawful for any person or persons entering the District of Columbia subsequent to June 30 in each year and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, to conduct such business until a sworn statement of the value of said stock has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unexpired portion of the fiscal year at the same rate as other personal taxes are levied. The assessor is authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons who shall fail to pay the tax required within three days after beginning business are subject to distraint, and the assessor must place bills therefor in the hands of the collector of taxes, who must seize sufficient of the goods of the delinquent to satisfy said tax. The owner, however, has the right of redemption within thirty days on payment of said tax, to which must be added a penalty of 1 per cent, together with the costs of seizure. The collector must sell such goods as are not redeemed at public auction after advertisement for three days preceding said sale.

Hotel companies and the proprietors of hotels are required to pay 1½ per cent on the assessed value of their furniture.

Each national bank, as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, must make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings for the preceding year ending the 30th day of June, and must pay per annum on such gross earnings as follows: Each national bank and all other incorporated banks and trust companies, respectively, 6 per cent; each gas company, 5 per cent; each electric lighting and telephone company, 4 per cent. And in addition thereto the real estate owned by each national or other incorporated bank and each trust, gas, electric lighting, and telephone company in the District of Columbia is taxed as other real estate in said District. Street railroad companies pay 4 per cent per annum on their gross receipts and other taxes. Insurance companies pay 1½ per cent on premium receipts.

All companies who guaranty the fidelity of any individual or individuals, such as bonding companies, pay 1½ per cent of their gross receipts in the District of Columbia.

Savings banks having no capital stock and paying interest to their depositors must, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits and pay a sum equal to 1½ per cent on the amount of their surplus and undivided profits on the 30th day of June preceding.

The capital stock of all corporations other than those herein provided for, organized in the District of Columbia or under the laws of any of the States or Territories of the United States, chiefly for the purpose of, and transacting business within, the District of Columbia, except those exempted by the laws relating to the District of Columbia, is appraised in bulk at its fair cash value by the board of personal-tax appraisers, and the corporation issuing the same is liable for the tax thereon according to such value, and must pay a sum equal to 1½ per cent on the assessed valuation thereof; but from the assessed valuation of such capital stock is first deducted the value of any and all real estate owned by such corporation in said District, which real estate is separately taxed against said corporation. This does not include newspaper, real estate, and mercantile companies, which by reason of incorporation receive no special franchise or privilege; but all such corporations are rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed.

Building associations pay to the collector of taxes of the District of Columbia 4 per cent per annum on their gross earnings for the preceding year ending June 30.

All taxes levied under the foregoing provisions of this law are due, payable, and collectible in May of each year, and are subject to the same penalties for nonpayment thereof as the general tax on real estate, until distraint or sale.

Private banks or bankers, not incorporated, pay a tax of $500 per annum. General brokers pay a tax of $250 per annum. The Washington Stock Exchange pays $500 per annum in lieu of tax on members thereof for business done on said exchange. Any broker who is a member of a regularly organized stock exchange located outside of the District of Columbia, and transacting a brokerage business therein, pays $100 per annum. If any person or firm shall have paid the tax provided for banks and bankers, such person or firm can not again be taxed as a broker or brokers. Note brokers pay a tax of $100 per annum. Exceptions are made of cooperative associations whose business is restricted to the members of such association.

The taxes for private banks and bankers, general brokers, and note brokers date from the 1st day of July in each year and expire on the 30th day of June following. Said taxes date from the first day of the month in which the liability begins, and payment must be made for a proportionate amount.

EXEMPTIONS.

The following personal property is exempt from taxation:

The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Libraries, schoolbooks, wearing apparel, articles of personal adornment, all family portraits, and heirlooms.

Household and other belongings, not held for sale, to the value of $1,000, owned by the occupant of any dwelling house or other place of abode, in which such household and other belongings may be located.

PENALTY FOR VIOLATION OF LAW.

Any person violating any of the provisions of the personal tax law is liable to a penalty of not exceeding $500 for each offense, such penalty to be imposed upon conviction in the police court of the District as other fines and penalties are imposed, and in default of payment of such penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months. (Act approved July 1, 1902.)

LICENSES.

All licenses are issued by the assessor, over his hand and official seal. No person is permitted to carry on any business, trade, profession, or calling, for which a license is imposed, without having first obtained such license. Applications for licenses must be made to the assessor, and no license can be granted until payment for the same shall have been made. Each license must specify the name of the person to whom issued, the business, trade, profession, calling, etc., for which it is granted, and the location at which such business is to be carried on. Licenses may be assigned or transferred upon application, under the terms and conditions applicable to the original granting of the same, and the assessor must issue a certificate of such transfer upon payment of a fee of 50 cents. When more than one business, trade, profession, calling, etc., for which a license is prescribed, shall be carried on by the same person, a license must be obtained for each such business, etc. Licenses are good only for the location designated thereon, and no license can be issued for more than one place of business without payment of separate tax for each. All licenses date from the 1st of November and expire on the 31st of October following, except those specially designated in the following list. Licenses issued at any time after beginning of license year date from first day of month of issue and end the last day of license year, payment being made for proportionate amount of license tax. In cases where license is less than $5 per annum they terminate one year from first day of month of issue. No one holding a license is permitted to allow any other person charged with a separate license to operate under his license. All licenses must be conspicuously posted on premises of the licensee, and be accessible at all times for inspection by police officers or others authorized in that respect. Licensees having no located place of business must exhibit their licenses when requested to do so by proper authorities.

Applications for licenses for hotels and theaters must have written approval of inspector of buildings and chief of fire department. Any license issued to proprietor of a theater or other public place of amusement may be terminated by the Commissioners whenever it shall appear to them that after due notice the person holding such license shall have failed to comply with such regulations as may be prescribed by the Commissioners for the public decency. (Act of March 1, 1901.)

Proprietors of hotels can not obtain a license for less than $30 per annum.

An act to prevent fraudulent transactions on the part of commission merchants, approved March 21, 1892, is made applicable to auctioneers, their agents, and employees.

Drivers of licensed passenger vehicles, while transacting such business, must wear upon their breasts a badge numbered to correspond with license of his vehicle, such badge being furnished by District of Columbia upon payment of fee of 50 cents.

In addition to license for proprietors of livery stables, they must obtain licenses for any vehicles owned by them occupying public stands.

The Commissioners must approve applications for licenses for vehicles for transportation of passengers operated over a definite route.

For entertainments given in church premises or private residences, where the proceeds are for church or charitable purposes and no rental is charged, no license is required.

Applications for licenses for shooting galleries must be accompanied with certificate from inspector of buildings, that suitable precautions have been taken for public safety, and with written authority from majority of occupants and residents on the same side of the square in which proposed gallery is to be located, and also on confronting side of the square fronting opposite to the same. The chief of police is authorized to prescribe the caliber, firearms, and kind of cartridges to be used.

The Commissioners have discretion to refuse licenses for merry-go-rounds, flying horses, etc.

Applications for licenses for massage establishments, mediums, clairvoyants, soothsayers, fortune tellers, and palmists must have the approval of the chief of police.

Hucksters are furnished with badges corresponding to number of license, which must be worn while transacting business, in addition to a corresponding number which must be attached to their vehicles. Hucksters' licenses need not be procured by persons bringing and selling at the several markets produce of their own raising.

The fire marshal must approve applications for licenses for buildings for storage of inflammable materials.

Persons violating any of the provisions of the license law, upon conviction thereof in the police court of the District of Columbia, are punishable by a fine of not more than $500 for each offense, and in default of payment, by imprisonment not exceeding thirty days, in the discretion of the court. (Act approved July 1, 1902.)

Following is a list of rates of licenses prescribed by act approved July 1, 1902:

Business.	When due.	Rate.	Remarks.
Agricultural exhibits	Nov. 1	$100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Amusements not otherwise provided for	do	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Apothecaries	do	6	Per annum.
Art exhibits	do	100	Do.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Athletic grounds		20	Per week.
		5	Per day.
Auctioneers	Nov. 1	100	Per annum.
Automatic machines. (See Slot machines.)			
Automobiles, autovehicles, etc	July 1	9	Do.
Automobile establishments	Nov. 1	25	License for 10 vehicles or less per annum.
		2	Each additional vehicle.
Balls		3	Per night.
Bankers, private (not incorporated)	July 1	500	Per annum.
Barrooms	Nov. 1	800	Do.
Baseball grounds		20	Per week.
		5	Per day.
Baths	Nov. 1	25	Turkish, Russian, or medicated, per annum.
Bill posters	do	20	Per annum.
Billiard rooms	do	12	Per annum for each billiard, bagatelle, jenny lind, or pool table, shuffle board, or other legitimate game table.
Boarding houses (public)	do	1	Per annum for each room.
Boxing schools	do	12	Per annum.
Brewers	do	250	Do.
Brewers' agents	do	250	Do.
Brokers, real estate	do	50	Do.
Brokers, railroad ticket	do	25	Do.
Brokers, general	July 1	250	Do.
Brokers, general (members of stock exchange)	do	100	Do.
Brokers, note	do	100	Do.
Building contractors	Nov. 1	25	Do.
Carnivals	do	100	Do.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Carriages for hire	July 1	6	Drawn by one animal, per annum.
		9	More than one animal, per annum.
		9	By other motive power, per annum.

Business.	When due.	Rate.	Remarks.
Carriage and wagon making establishments.	Nov. 1	$25	Per annum.
Cattle dealers	do	15	Do.
Cattle exhibits	do	100	Do.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Cigar dealers	do	12	Per annum.
Circuses		200	Per day.
Claim agents	Nov. 1	25	Per annum.
Clairvoyants	do	25	Do.
Commission merchants	do	40	Do.
Concerts		3	Per night.
Confectionery establishments	Nov. 1	12	Per annum.
Contractors of all kinds	do	25	Do.
Cook shops	do	18	Do.
Dairy lunches	do	18	Do.
Dealers in markets	do	5	Do.
Distillers or rectifiers	do	250	Do.
Druggists	do	6	Do.
Eating houses	do	18	Do.
Electromobiles	July 1	9	Do.
Employment offices	Nov. 1	10	Do.
Entertainments		3	Per night.
Entertainment halls	Nov. 1	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Exhibition halls	do	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Exhibits—agricultural, art, cattle, floral, food, freaks, industrial, mechanical, museums, poultry, side shows, etc.	do	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Fairs	do	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Fencing schools	do	12	Per annum.
Florists	do	15	Do.
Flying horses. (See Merry-go-rounds.)			
Football grounds		20	Per week.
		5	Per day.
Fortune tellers	Nov. 1	25	Per annum.
Fuel hucksters	do	5	Do.
General brokers	July 1	250	Do.
General brokers (members of stock exchange).	do	100	Do.
Golf grounds		20	Per week.
		5	Per day.
Gymnasiums	Nov. 1	12	Per annum.
Hacks. (See Carriages).			
Hand laundries	do	10	Do.
Hotels	do	1	Per annum for each room for the accommodation of guests.
Hucksters	Apr. 1	12	Per annum for each vehicle.
Ice-cream parlors	Nov. 1	18	Per annum.
Improvement and land companies. (See Land and improvement companies.)			
Inflammable oils	do	10	Per annum for storing quantity exceeding 5 barrels.
Information bureaus	do	10	Per annum.
Intelligence offices	do	10	Do.
Investment associations	do	100	Do.
Land and improvement companies	do	50	Do.
Laundries	do	20	Steam or other power, per annum.
		10	Per annum, operated by hand.
Lawn fetes. (See Picnics.)			
Lecture halls	do	100	Per annum.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Livery stables	do	25	Per annum for 10 stalls.
		2	Each additional stall.
Liquor dealers, retail	do	800	Per annum.
Liquor dealers, wholesale	do	300	Do.
Liquors, brewers or manufacturers of	do	250	Do.
Market dealers of all kinds	do	5	Do.
Massage establishments	do	25	Do.
Maturity associations	do	100	Do.
Medicated baths. (See Baths.)			
Mediums	do	25	Do.

Business.	When due.	Rate.	Remarks.
Merry-go-rounds		$12	Per week.
		10	Each subsequent week.
		3	Per day.
Note brokers	July 1	100	Per annum.
Omnibuses	July 1	6	Per annum, one animal.
		9	Per annum, more than one animal.
Oyster houses	Nov. 1	18	Per annum.
Palmists	do	25	Do.
Passenger transportation lines	do	6	Per annum for each vehicle not exceeding 10 passengers.
		12	Exceeding 10 passengers.
Pawnbrokers	do	100	Per annum.
Peddlers	Apr. 1	25	Do.
Picnic grounds	Nov. 1	100	Do.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Polo grounds		20	Per week.
		5	Per day.
Pool rooms	Nov. 1	12	Per annum.
Private banks or bankers (not incorporated).	July 1	500	Do.
Produce dealers	Apr. 1	12	Per annum for each vehicle.
Race tracks		20	Per week.
		5	Per day.
Real estate brokers. (See Brokers, real estate.)			
Rectifiers. (See Distillers.)			
Restaurants	Nov. 1	18	Per annum.
Russian baths. (See Baths.)			
Secondhand dealers of all kinds	do	40	Do.
"Seeing Washington cars." (See Passenger transportation lines.)			
Shooting galleries	do	12	Do.
Skating rinks	do	100	Do.
		10	Per week.
		5	Each subsequent week.
		3	Per day.
Slot machines	do	2	Per annum, each machine.
		50	Per annum, unlimited number.
Soothsayers	do	25	Per annum.
Stock exchange, Washington	July 1	500	Do.
Theaters	Nov. 1	100	Do.
		20	Per week.
		10	Less than one week.
Ticket brokers, railroad. (See Brokers, ticket.)			
Tournaments. (See Race tracks.)			
Turkish baths. (See Baths.)			
Undertakers	Nov. 1	25	Per annum.
Vehicles for hire	July 1	6	Per annum, one animal.
		9	More than one.
		9	Horseless or motor.
Victuallers	Nov. 1	18	Per annum.
Wagon-making establishments. (See Carriage-making establishments.)			
Washington Stock Exchange	July 1	500	Do.

Steam engineers' licenses are of three grades—first, second, and third—the fee for each being $3. Examination before board of engineers is required. Licenses are good until revoked or changed to higher grade. (Act of February 28, 1887.)

Dealers in deadly and dangerous weapons are required to file bonds of $1,000 each, but no fee is charged. (27 Stat., 117.)

The fee for transferring a license is 50 cents. (Act of July 1, 1902.)

H. H. DARNEILLE,
Assessor District of Columbia.

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Supreme Court of the United States.

No. 10.—October Term, 1902.

A. W. Corbus, Appellant,
vs.
The Alaska Treadwell Gold Mining Company.

Appeal from the District Court of the United States for the District of Alaska.

[January 5, 1903.]

This, like the preceding cases, was brought to prevent the payment of an Alaskan license tax. The method pursued was, however, different. It is a suit in equity brought by a stockholder against a corporation—the stockholder and the corporation being the sole parties plaintiff and defendant—to restrain it from paying the tax. Notice was given to the United States district attorney of the pendency of the suit, who appeared as *amicus curiæ*, and, disclaiming any intention of, in any manner, representing or binding the United States, denied the jurisdiction of the court, its right to enjoin the defendant from paying the license, and argued in favor of the constitutionality of the law.

The bill alleged that the defendant was incorporated under the laws of the State of Minnesota, and engaged in mining and milling ore in the District of Alaska, with an office and manager in the district; that "the general control of the affairs of said company is entrusted to a board of directors who reside in San Francisco, State of California, and are nonresidents of the District of Alaska; that the complete control and management of the affairs of said company in Alaska is under the supervision and control of its general superintendent and manager, J. P. Corbus."

It is further averred that the company by its general superintendent in Alaska is intending to pay the license tax which, for the year beginning July 1, 1899, amounted, with the clerk's fee, to the sum of $1,875. After denying the legality of the tax the bill proceeds:

"Your orator further shows that this suit is not a collusive one, brought to confer jurisdiction of the case upon this court, of which it would not otherwise have cognizance; that your orator has not been able, because of the great distance at which the directors of said company reside, to request them to refuse to pay said tax and to apply for said license, but has made such request of the officers or agents of said company controlling its business in Alaska, but they have failed and refused not to make such application and pay such tax, for the reason that, though they doubt the constitutionality of said law, the pains and penalties imposed by said act for the omission so to do are so severe that said company and its said officers and agents fear, and have reason to fear, the great loss and injury in defending

prosecution that might be brought against it for the failure to comply with said law; that they deem it better to submit to the illegal tax than to incur the consequences of the failure to comply with it; that your orator is advised that there is no procedure provided by law whereby said company could test the validity of said law and the constitutionality of said tax without incurring the pains and penalties therein provided for the violation thereof, inasmuch as the said act requires the voluntary payment of the tax imposed under a penalty of heavy forfeiture and fines for the failure to make such voluntary payment; that the said company, in view of the foregoing, has refused and still refuses and intends omitting to comply with complainant's demand to refuse to pay said tax, and has resolved and determined and intends to comply with all and singular the provisions of said chapter 44 of said act of Congress, and to pay said tax upon its stamps and upon its said mercantile establishment, amounting to the said sum of eighteen hundred and seventy-five dollars for the said year, and to continue the payment of a like or greater sum for each year hereafter.

"Your orator further shows that if said company and its officers, as they have proposed and declared their intention to do, shall pay said tax the assets of the said company will be thereby diminished and lessened, as well as the dividends to be declared upon the stock thereof, and the value of the shares of said company, including the shares owned by your orator and all others in whose behalf this suit is brought; and your orator further shows that this involves more than the sum of five thousand dollars; that unless the company should comply with said act or this court grant the relief herein prayed for the said company would be exposed to a multiplicity of suits and prosecutions for the violation of said act, and would be put to great expense and suffer irreparable injury in defending said suits and avoiding the fines and forfeitures provided by the said act, and its assets and the value of its shares would be thereby greatly lessened, to the great and irreparable injury and damage to your orator and other shareholders in said company."

A demurrer to the bill was sustained and a decree entered dismissing the suit. A single opinion was filed by the district judge in disposing of all of these tax cases. In that opinion, and with special reference to the present case, he said:

"In the cases at bar the district attorney, so far as he had the right to do so, the government not being a party to the suits, raised not only the question of the jurisdiction of the court because the plaintiffs had a plain, speedy, and adequate remedy at law, but insisted that the suits were of a friendly nature, collusive in character, and brought for the sole purpose of conferring jurisdiction upon the court, to the end that the defendants might escape paying the license fee imposed by law; and when all the facts are taken together, as disclosed by the record, some color is lent to the latter contention. Take the case of *Corbus* v. *The Treadwell Co.*: the bill was filed July 17, the subpœna served July 19, commanding the defendant to answer the bill within twenty days. No appearance was made by defendant, however, and no pleading filed until November 15, nearly four months after the filing of the bill, and not until about the time the matter was called up for hearing, when a demurrer was interposed. Counsel for defendant did not contend for his demurrer, made no argument, and

filed no brief in support of the same, and in the very nature of the case the interests of the plaintiff and defendant are identical. Then, if the object and purpose of the suit is solely to test the constitutionality of the law without first paying into the United States Treasury the amount of the license tax, and there can be no other object, and if the court will sustain the plaintiff and enjoin the defendant as prayed, how is the private citizen to avail himself of a similar remedy? Who shall enjoin him and save him from paying his tax until the constitutionality of the law is determined? And if he cannot avail himself of this manner of suit, why should corporations or copartnerships be permitted to do so? Why should not corporations and individuals have and be permitted to exercise identically the same legal rights and remedies under the law?"

From the decree of dismissal the plaintiff appealed to this court.

Mr. Justice BREWER delivered the opinion of the Court.

The thought suggested by the quotation from the opinion of the district judge impresses us forcibly. Evidently the plaintiff patterned his proceeding upon *Pollock* v. *Farmers' Loan & Trust Co.*, (157 U. S. 429.) But that case does not determine to what extent a court of equity will permit a stockholder to maintain a suit nominally against the corporation but really for its benefit. *Hawes* v. *Oakland*, (104 U. S. 450,) is pertinent in this direction. In that case a citizen of New York, a stockholder in the Contra Costa Waterworks Company, a California corporation, filed his bill in the Circuit Court of the United States for the District of California against the city of Oakland, the waterworks company and its directors. The gravamen of the bill was that the city claimed and received from the company without compensation a supply of water for all municipal purposes whatever; that the claim had no legal foundation, and that such supply without compensation resulted in a diminution of the dividends which should come to the plaintiff and other stockholders, and a decrease in the value of their stock. The bill further alleged that the plaintiff applied to the directors to desist from such illegal practice and take immediate proceedings to prevent the city from taking water from the waterworks without compensation, but that they declined to do so and threatened to continue to furnish water to the city of Oakland free of charge for all municipal purposes, as had theretofore been done. To this bill the company and its directors failed to make answer or other defense. The city of Oakland filed a demurrer, which was sustained and the bill dismissed, and from such decree the case was appealed to this court. The opinion, which is too long to quote in full, opens with these observations (pp. 452, 453):

"Since the decision of this court in *Dodge* v. *Woolsey*, (18 How. 331,) the principles of which have received more than once the approval of this court, the frequency with which the most ordinary and usual chancery remedies are sought in the Federal courts by a single stockholder of a cor-

poration who possesses the requisite citizenship, in cases where the corporation whose rights are to be enforced cannot sue in these courts, seems to justify a consideration of the grounds on which that case was decided, and of the just limitations of the exercise of those principles.

"This practice has grown until the corporations created by the laws of the States bring a large part of their controversies with their neighbors and fellow citizens into the courts of the United States for adjudication, instead of resorting to the State courts, which are their natural, their lawful and their appropriate forum. It is not difficult to see how this has come to pass. A corporation having such a controversy, which it is foreseen must end in litigation, and preferring for any reason whatever that this litigation shall take place in a Federal court, in which it can neither sue its real antagonist nor be sued by it, has recourse to a holder of one of its shares, who is a citizen of another State. This stockholder is called into consultation and is told that his corporation has rights which the directors refuse to enforce or to protect. He instantly demands of them to do their duty in this regard, which of course they fail or refuse to do, and thereupon he discovers that he has two causes of action entitling him to equitable relief in a court of chancery; namely, one against his own company of which he is a corporator, for refusing to do what he has requested them to do, and the other against the party which contests the matter in controversy with that corporation. These two causes of action he combines in an equity suit in the Circuit Court of the United States, because he is a citizen of a different State, though the real parties to the controversy could have no standing in that court. If no non-resident stockholder exists, a transfer of a few shares is made to some citizen of another State, who then brings the suit. The real defendant in this action may be quite as willing to have the case tried in the Federal court as the corporation and its stockholder. If so, he makes no objection, and the case proceeds to a hearing. Or he may file his answer denying the special grounds set up in the bill as a reason for the stockholder's interference, at the same time that he answers to the merits. In either event the whole case is prepared for hearing on the merits, the right of the stockholder to a standing in equity receives but little attention, and the overburdened courts of the United States have this additional important litigation imposed upon them by a simulated and conventional arrangement, unauthorized by the facts of the case or by the sound principles of equity jurisdiction."

After a full discussion, with the citation of many authorities, the conclusion is summed up in these words (pp. 460, 461):

"We understand that doctrine to be that to enable a stockholder in a corporation to sustain in a court of equity in his own name, a suit founded on a right of action existing in the corporation itself, and in which the corporation itself is the appropriate plaintiff, there must exist as the foundation of the suit—

"Some action or threatened action of the managing board of directors or trustees of the corporation which is beyond the authority conferred on them by their charter or other source of organization;

"Or such a fraudulent transaction completed or contemplated by the acting managers, in connection with some other party, or among themselves, or with other shareholders as will result in serious injury to the corporation, or to the interests of the other shareholders;

"Or where the board of directors, or a majority of them, are acting for their own interest, in a manner destructive of the corporation itself, or of the rights of the other shareholders;

"Or where the majority of the shareholders themselves are oppressively and illegally pursuing a course in the name of the corporation, which is in violation of the rights of the other shareholders, and which can only be restrained by the aid of a court of equity.

"Possibly other cases may arise in which, to prevent irremediable injury, or a total failure of justice, the court would be justified in exercising its powers, but the foregoing may be regarded as an outline of the principles which govern this class of cases.

"But, in addition to the existence of grievances which call for this kind of relief, it is equally important that before the shareholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation, he should show to the satisfaction of the court that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or action in conformity to his wishes. He must make an earnest, not a simulated effort, with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the court. If time permits, or has permitted, he must show, if he fails with the directors, that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains. And he must show a case, if this is not done, where it could not be done, or it was not reasonable to require it." See also *Detroit* v. *Dean*, (106 U. S. 537–542;) *Quincy* v. *Steel*, (120 U. S. 241.)

While this case is unlike that in that it does not attempt to transfer from a State to a Federal court a controversy which really belongs in the former—there being none other than Federal courts in the territory—yet the principle is the same, for it is an effort to secure for the benefit of the corporation an injunction which it could not itself obtain and which no individual similarly situated can obtain.

Immediately after announcing the decision in *Hawes* v. *Oakland*, *supra*, this court promulgated an additional equity rule (Rule 94):

"Every bill brought by one or more stockholders in a corporation, against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law; and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action."

It must not be understood that a mere technical compliance with the foregoing rule is sufficient and precludes all inquiry as to the right of the stockholder to maintain a bill against the corporation. This court will examine the bill in its entirety and determine whether, under all the cir-

cumstances, the plaintiff has made such a showing of wrong on the part of the corporation or its officers and injury to himself as will justify the suit. The directors represent all the stockholders and are presumed to act honestly and according to their best judgment for the interests of all. Their judgment as to any matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs. As said in *Dodge* v. *Woolsey*, *supra*, 344: "The circumstances of each case must determine the jurisdiction of a court of equity to give the relief sought."

It appears from the bill that the capital stock of the corporation is divided into 200,000 shares of the par value of $25 each, of which the plaintiff is the owner of 100 shares; that the total annual tax, including fees, amounts to $1,875, which results in a charge upon the plaintiff's interest of less than one dollar a year. This would scarcely be a case of "irremediable injury or a total failure of justice," as indicated in next to the last paragraph of the quotation from the opinion of this court in *Hawes* v. *Oakland*. Indeed, the tax upon the company of $3 a stamp for each of the 540 stamps used by it in the crushing and reduction of ore does not appear to be such as threatens ruin to the company. It does not appear from the bill that any other stockholder shares with the plaintiff his belief in the illegality of the tax or objects to its payment by the corporation, although of course it may be assumed that every person is willing to be relieved from the payment of a tax if other parties will bring about that relief without any trouble to himself.

Again, as suggested by the district judge in his opinion, the plaintiff could not maintain an injunction suit to restrain a similar tax upon himself and why should he be permitted to secure a relief to the corporation (of which he is a minor stockholder) which he could not secure for himself individually? Are corporations the favored parties in respect to the enforcement of taxes? And when the assistance of a court of equity is invoked the purpose of the suit and the object which is sought to be accomplished are frequently matters which may properly be considered. Not only is it the general rule that equity will not restrain the collection of a

tax on the mere ground of its illegality, but also, as appears by its legislation, Congress has attempted to enforce that rule and to require payment of a tax by the party charged therewith before inquiry as to its validity will be permitted. See *Pacific Steam Whaling Company* v. *United States*, *ante*, p.——. Now before a court of equity will in any way help a party to thwart this intent of Congress, it should affirmatively and clearly appear that there is an absolute necessity for its interference in order to prevent irreparable injury. No considerations of mere convenience are sufficient. And if the party primarily and directly charged with a tax is unable to make a case for the interference of a court of equity, no one subordinately and indirectly affected by the tax should be given relief unless he shows not merely irreparable injury to the tax debtor as well as to himself, but also that he has taken every essential preliminary step to justify his claim of a right to act in behalf of such tax debtor. We have seen how small the burden of this tax is upon the plaintiff and how comparatively light it is upon the corporation—how far short it comes of anything like irretrievable ruin. It is clearly an attempt to thwart in behalf of this corporation the obvious purpose of Congress, that a tax must be paid before its validity is challenged. Under those circumstances a court of equity should scrutinize with the utmost care the conduct of the plaintiff and see that he has done everything which ought to have been done to secure action by the corporation and its directors, and justify under the assumption of a controversy between himself and the corporation his prosecution of a litigation for its benefit.

It appears affirmatively that no demand has been made on the directors to protect the corporation against this alleged illegal tax. The only demand shown is that upon the managing agent of the corporation in charge of the business in Alaska, and the excuse is that the directors (living in San Francisco) are too far away to be reached by notice. The act went into effect March 3, 1899, and this bill was filed July 17, 1899. The rule requires that the plaintiff must set forth with particularity the efforts made by him to secure action by the directors. It does not appear that he made any effort to secure such action, but he relies simply on the distance of the directors from the place where he resides and in which the court is held as an excuse for not applying to them. We are of opinion that the excuse is not sufficient. He should at least have shown some effort. If he had made an effort and obtained no satisfactory result either by reason of the distance of the directors or by their dilatoriness or unwillingness to act, a different case would have been presented, but to do nothing is not sufficient. For aught that the bill discloses he may have been in San Francisco from the time of the passage of the act until he left to come to Alaska for the purpose of bringing this suit. The district judge, in his opinion, said that the facts disclosed by the record lend

color to the contention that the suit was collusive. In addition to the matters pointed out by him it may also be stated that since the case was brought to this court the company has not appeared by counsel in either brief or argument.

Putting all these things together we are of opinion that the action of the District Court in dismissing the suit was right, and it is

Affirmed.

The CHIEF JUSTICE took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.